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ELEMENTS OF INDIAN INCOME-TAX

Twelfth Revised & Enlarged Edition
[1968-69Ed.]
[Based on the Finance Act, 1968]

R. N. LAKHOTIA

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ELEMENTS OF INDIAN INCOME-TAX

TWELFTH REVISED & ENLARGED EDITION

[Incorporating the provisions of The Finance Act, 1968]

Recommended by several Universities & Colleges.

BY

RAM NIWAS LAKHOTIA

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Preface to the Twelfth Edition

It is matter of great encouragement to me that the first eleven editions of this book published since June, 1959 have been sold out in about nine years' time and that I have been compelled to bring out a twelfth edition of the same so soon.

2. This edition is based on the Income-tax Act, 1961 as amended up-to-date by the Finance Act, 1968, the Companies (Profits) Surtax Act, 1964, and other allied Acts & Rules. The number of practical problems have been increased to over 110 as against 21 only in the 1st Edition. Several new appendices containing the facts and the principles laid down in the leading tax cases on the subject (arranged chapter wise & topic wise) and the salient features of the Companies (Profits) Surtax Act, 1964 have also been incorporated in this edition. This, I am sure, has enhanced the utility of the book for the students in particular and the tax paying public in general.

3. A disquieting feature of the income-tax legislation in India is the constant amendments that are being effected to the Act. The Income-tax Act, 1961 has been amended nearly 18 times since 1-4-1962, when it first came into force. The latest Finance Act, 1968 has made numerous and far reaching changes in the main Act as well as in the tax rate structure. In this the task of the author becomes very difficult. Before he can produce a treatise containing the amendments to the Act, he finds that the law has again been amended. Under the circumstances, no text-book on Income-tax law can claim to be up-to-date. The Finance Act, 1968 has made the following important changes in the Income-tax Act, which have been discussed at appropriate places in the book :

A. I.T. Rates for the A.Y. 1968-69.

They are the same as specified in the Finance (No. 2) Act, 1967 for payment of "Advance-tax" during the F.Y. 1967-68.

B. Rates of Annuity Deposits for the A.Y. 1968-69—same as prescribed in the II Schedule to the Finance (No. 2) Act, 1967 as increased by the Taxation Laws Amendment Act, 1967.

C. I.T. Rates for Advance-tax and deduction of tax from Salaries during the F.Y. 1968-69 (A.Y. 1969-70)

Please See Appendix I.

D. I.T. Rates for deduction of tax at source in other cases during the F.Y. 1968-69. No change except re-adjustment in the context of discontinuance of the levy of unearned and earned income surcharges.

E. Proposed amendments to the I.T. Act, w.e.f. 1.4. 68 :

(1) Export markets development allowance (new s. 35B).

(2) Tax incentives for improving agricultural productivity etc. (new s. 35C).

(3) Entertainment expenditure through employees.

(4) Restrictions on deduction of expenses & payments in certain circumstances (new s. 40A & s. 58).

(5) Benefits of tax credit or tax concession for beneficial owners of shares (ss. 80K, 80M, 199 proviso).

(6) Refund of tax on provisional assessment on the basis of return of income (new s. 141A).

(7) Liberalisation of provisions for deduction of tax at source from interest (s. 194A).

(8) Stepping up of penalty for concealment of income (s. 271).

(9) Punishment of persons defaulting in their obligation to deduct tax at source and or pay to the Government (ss. 276, 276B, 279).

(10) No Annuity Deposits for the A.Y. 1969-70 onwards.

(11) Elimination of the waiting period of 12 months for refund on Tax Credit Certificates (ss. 280Z, 280ZA, 280ZB, 280ZD).

F. Proposed Amendments to the I.T. Act, w.e.f. 1.4.69.

(i) Enlargement of the scope of short-term capital gains s. 2 (4A).

(ii) Interest Income of non-residents from non-residents Bank Accounts in India (s. 10 (4A)).

(iii) Tax concessions in respect of a new Central Government Public Provident Fund (ss. 10 (11), 80C).

(iv) Standard deduction for conveyance owned by salaried tax payer (s. 16 (iii)).

(v) Computation of income from house property (ss. 23 to 24).

(vi) Computation of income on providing perquisites etc., to high paid employees in business and professions (s. 40).

(vii) Tax incentives for improving agricultural productivity and supplementary goods and resources (ss. 43 (4), 80I, 80B (7).

(viii) Deduction of tax paid by a Registered Firm (s. 67 (i)).

(ix) Exemption for the first Rs. 500 of dividend income (s. 80L(i)).

(x) Exemption of Technical Fees, Royalty, Dividends from certain foreign sources (80N, 80O).

(xi) Tax relief to totally blind resident individuals (new s. 80U).

(xii) New definition of investment Co. (s. 109 (ii)).

(xiii) Reduction in time-limits for completion of assessments and claims for refund (ss. 153 & 237).

G. Special Provisions for beneficial Owners of Shares.

At page 116, of the book, under para 10(b) the entertainment expenditure percentage have been further curtailed by 50% at all places by sec. 37(2A) inserted by the Taxation Laws (Amendment) Act, 1967, which has further provided that the said restrictions will apply to such expenditure incurred after 30.9.67 by every assessee. Necessary correction may please be made. Please also see Page 229.

I am thankful to the Allahabad, Rajasthan, Vikram, Jabalpur and various other Universities and colleges for having recommended this book for their B. Com. Examinations. Last, but nevertheless the least, I am indebted to all the patrons and well wishers who have helped me in bringing out this edition. The book would not have been complete without the assiduous labour put in by my son Subhash Chandra Lakhotia who has gone through the proofs with meticulous care.

Current Tax Bulletin,
P-16, C.I.T. Road, Calcutta-14. R. N. LAKHOTIA
22nd July, 1968. Phone : 44-7355.

Extracts from the Preface to the First Edition—[1959]

...In recent years the law of income-tax has become very intricate. It has grown in size and complexity owing to the multiplicity of amendments introduced therein by the Parliament. The students of the subject in the Indian Universities and the tax-payers find considerable difficulty in understanding and grasping the law. In this book an effort has been made to analyse this difficult branch of law in as lucid a manner as possible with the help of a sufficient number of practical problems fully solved. The book has been made up-to-date by incorporating therein the provisions of the Finance Act, 1959. Besides, the last 5 years' question papers of B. Com. & Agra and Rajasthan Universities with their answers and an alphabetical index, to facilitate ready reference to any topic are also given in the book.

This book is primarily ment as a text book for B. Com. & LL. B. students of Indian Universities. Besides, it will also prove equally useful to the income-tax payers and others who want to acquire a preliminary knowledge of the subject in one reading...

Ahmedabad,
22.6.59

R. N. LAKHOTIA

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PART I

PRELIMINARY

CHAPTER I

INTRODUCTION & DEFINITIONS

History of the Law

Though statistics prove that Income-tax is one of the most important sources of revenue in India, yet most of the people are ignorant of the law on the subject. This is because Income-tax law in India remains a very complicated piece of legislation in spite of the several attempts made by the Government from time to time at simplifying it. The complexity of this law has rather grown with the growth of the Act. It will be instructive as well as interesting therefore, to know in brief the history of this important piece of legislation in India.

In this country Income-tax as such was imposed for the first time in the year 1860. At that time it was quite a simple affair. After some minor amendments from time to time a new Act was passed in the year 1886, which continued upto 1903. Next important change took place in 1916. But with the increasing weight of taxation, the law was wholly recast by the passing of the Income-tax Act of 1918. A peculiar feature of this Act was the taxation of the income of a year in the same year itself. However, on the recommendations of an all India Committee appointed in 1921, the **Indian Income-tax Act of 1922** was passed. The Act was materially altered by Amendment Acts of 1939, 1951, 1954, 1960 and the like. Besides, the Finance Acts of 1955, 1956, 1957, 1958, 1959, 1960 and 1961 made drastic changes in the tax structure and rates. Hence the work of recasting the whole of the law with a view to making it simpler and at the same time not

causing a major change in the tax structure of the Act, was taken up by the Government of India. As a result of the recommendations of the Law Commission and the Direct Taxes Administration Enquiry Committee (or Tyagi Committee) the present Act, i. e., **the Income-tax Act, 1961** was passed. It has repealed the old Act, i.e., the Indian Income-tax Act, 1922. The new Income-tax Act, 1961 has come into effect from 1-4-1962. This Act has since been amended seventeen times. Recently it has drastically been amended by the Finance Act, 1968. The sections referred to in this book are the sections of the Act of 1961 as amended up-to-date.

There are at present two main Acts governing the levy of Income-tax in India :—

(a) **The Income-tax Act, 1961.** It is the main enactment ; AND

(b) **The Finance Act, 1968.** The Finance Act is passed each year by the Parliament. It fixes the rates of taxes to be charged for assessment year in question. Recently it has also been used for the purpose of effecting amendments in the main Act.

2. Applicability of the old Act, i.e., The Indian Income-tax Act, 1922 in certain cases—Sec. 297.

Though the old Indian Income-tax Act, 1922 has been repealed by the Act of 1961, yet as provided in section 297 of the Income-tax Act, 1961, the Indian Income-tax Act of 1922 shall apply in various situations even after 1-4-62 as considered below :—

(i) Returns filed before 1-4-62 by any person in respect of 1961-62 assessment year or any prior year.

(ii) Returns filed after 1-4-62 for the assessment year 1961-62 or any earlier year (only substantive provisions to apply). However, the procedure to apply in such cases will be that of the Act of 1961.

(iii) Pending proceedings before any Income-tax authority,

the Appellate Tribunal or any court, by way of appeal, reference or revision on 1-4-1962.

(iv) Cases of reassessment proceedings u/s 34 of the repealed Act, if the notice is issued before 1-4-62.

(v) Section 23A of the repealed Act for the assessment year 1961-62 or any earlier year.

(vi) Penalty proceedings for any assessment completed before 1-4-62.

(vii) Any election or declaration made or option exercised by an assessee under any provision of the old Act and in force immediately before 1-4-62 shall be deemed to have been an election or a declaration made or option exercised under the corresponding provision of the Income-tax Act of 1961.

3. Levies made under the Acts.

Income-tax in India now comprises of the following levies only :—

(i) Income-tax proper (including the super-tax which has been marged in it by the Finance Act, 1965).

N.B.—Income-tax on companies is known as Corporation Tax.

(2) Surcharge—additional emergency duty levied occasionally on income-tax. It is for the purposes of the Union. At present, there are three types of surcharges :—

(a) Surcharge on tax on earned income above Rs. 1 lakh, (b) Surcharge on tax on unearned income above Rs. 30,000 and (c) Special Surcharge at a flat rate of 10% on the entire tax imposed by the Finance Act, 1966. The first two surcharges, have been abolished w.e.f. A.Y. 1969-70. Besides, there is a system of annuity deposit in cases of total income exceeding Rs. 15,000 upto the A.Y. 1968-69. For a detailed discussion regarding the rates of income-tax and annuity deposit please see Appendix I. The A.D.S. has been abolished w.e.f. 1-4-68 i.e., effective from the A.Y. 1969-70.

4. Units of Assessment, i.e., Persons liable to Income-tax—Sec. 2(31) & 4.

The following types of persons only are liable to pay income-tax :—

(1) Individual ;
(2) Hindu undivided family ;
(3) Company ;
(4) Firm—registered or unregistered ;
(5) Any other association of persons or the members of the association ;
(6) Local authority ; AND
(7) Every artificial juridical person e.g., an idol etc.

5. Heads of Income—Sec. 14.

The various heads of income, profits and gains chargeable to income-tax are as follows :—

(1) Salaries—	Sections	15 to 17
(2) Interest on securities—	,,	18 to 21
(3) Income from house property—	,,	22 to 27
(4) Profits and gains of business or profession—	,,	28 to 44
(5) Capital gains—	,,	45 to 55
(6) Income from other sources—	,,	56 to 59

6. Tax Liability.

An individual, an unregistered firm, a partner of a registered firm, or any association of persons is liable to income-tax if his total income under the heads of income mentioned in the preceding para in a particular (previous) year exceeds Rs. 4,000.

A married individual with one dependent child is liable to pay income-tax only when his total income exceeds Rs. 4,400 and with more than one dependent child, when it exceeds Rs. 4,800.

A Hindu undivided family fulfilling certain conditions fixed by the Finance Act, is charged to income-tax only

if its total income in a particular previous year exceeds Rs. 7,000.

A company or a local authority is liable to income-tax at a flat rate on its entire income, howsoever small that sum may be.

A registered firm itself is liable to income-tax only if its total income exceeds Rs. 25,000. The rules for the charge of income-tax, corporation tax and surcharges and various allowances etc. are explained in detail later on in Appendix I.

7. How to pay regular Income-tax.

Any person whose income in a particular accounting year exceeds the maximum non-taxable limit, is required to file a Return of Income with the Income-tax Officer of the area concerned. If the return is in order, the I. T. O. assesses him and levies tax. After receiving a Notice of Demand from the Income-tax Officer and the requisite chalan for the payment of tax, the person concerned is required to pay it within the time specified therein. In some cases as discussed in Ch-XVIII an assessee is voluntarily required to pay tax on the basis of self-assessment.

8. Definitions—Previous year—Sec. 3.

There are certain technical expressions used in the Act. For a thorough understanding of the Act, it is necessary that these are understood thoroughly well. One of the most important terms which requires a precise definition is the 'previous year.' Income-tax is leviable annually for each financial year, commencing on the first of April and ending on the 31st of March following. For example, the present Financial Year is 1968-69. This year is also known as the Income-tax Year or the Fiscal Year or the **Assessment Year.** The tax is levied on the income of the previous year at the rates given in the Finance Act passed by the Parliament each year. Thus income is made in one year

and tax is to be paid in the following year. The following are the important points in connection with the definition of the 'previous year' :—

(1) Generally speaking, tax is to be paid on the income of the previous year.

(2) The previous year (also known as the Accounting Year or Income Year) means the twelve months ending on 31st March immediately preceding the Income-tax year i. e., the year for which the assessment is to be made. Thus for the Income-tax or Assessment year 1968-69, the previous year would be the financial year 1967-68.

(3) A previous year can be any period of 12 months ending within the previous year as described above. Thus for an assessee whose accounting year is 1st January, 1967 to 31st December, 1967 the previous year would be calendar year 1967 (as it falls in the financial year 1967-68) for the A. Y. 1968-69.

(4) For one assessment year there may be separate previous years for separate sources of income.

(5) In case of an income which is a share of profits from a partnership, the previous year will be the accounting year of the firm.

(6) In case of a *setting up of a new business*, the previous year is the period from the date of setting up of the business to 31st March next following or any other date at his option, if the accounts have been made up for a period not exceeding 12 months.

(7) A previous year once adopted, cannot be changed except with the prior permission of the Income-tax Officer and on such conditions as he may impose.

(8) A previous year cannot be more than 13 months or less than 11 months.

Thus for the purpose of paying tax for the Assessment year 1968-69 the previous, year, i. e., *the year on the income of which tax is to be paid* can be any of the following :—

(a) 1st April, 1967 to 31st March, 1968 ; or

(b) 1st January, 1967 to 31st December, 1967 ; or

(c) 1st July, 1966 to 30th June 1966 ; or

(d) Any Samvat year or Dashera year or Diwali year or any other year provided it ends in the Financial Year 1967-68.

Exceptions to the Rule :—

In the following cases tax is not charged on the income of the previous year but on the income of the same year :—

(i) Profits of non-residents from occasional shipping business—section 172.

(ii) When a person is likely to leave India for good—Sec. 174.

(iii) Persons trying to alienate their assets with a view to avoid tax—Section 175.

(iv) When a business, profession or vocation is discontinued—Sec. 176

(v) Royalties or copyright fees for literary or artistic work —Sec. 180.

PROBLEM No. 1.

On 1st August, 1967 A started a new cloth business. Upto the time of assessment for 1968-69, he had not made up the accounts of his new business.

(a) If his assessment were taken up in June, 1968 and he were to urge that he would close his accounts of the new business for the first year on 31st July, 1968 would you concede to his request, and if so, why ?

(b) If his assessment were taken up in September, 1968 and the were to urge that he wanted to adopt the year ending 31st July as his previous year, would you concede to his request, and if so, why ?

SOLUTION.

(a) For the new cloth business, he is entitled to adopt as the previous year any period upto the end of 12 months from the date of commencement of the business for which the accounts are made up.

As the assessee wants to close his accounts for the new business on 31-7-68 i.e., exactly after a period of 12 months from the commencement of the business, he can adopt the year ending 31st July as his previous year. His request for adopting this period as his accounting year would be conceded to and in that case there would be no previous year for this business for assessment year 1968-69.

(b) When the assessment is taken up in September 68, the assessee could claim to adopt the year ending 31st July, 1968 as the previous year of his new cloth business *only if he had closed the accounts of that business on that date.* But accounts have not been made up till the date of assessment. As the accounts are not closed, the assessee is not entitled to the option of adopting any other year as the previous year except that ending on 31st March, 1968. The income of the new cloth business for the period 1-8-67 to 31-3-68 will, therefore, be assessed for the assessment year 1968-69.

PROBLEM No. 2.

Shri A has several businesses whose accounting periods are as follows :—

(1) Cloth business—Diwali year (October/November to October/November).

(2) Contract business—Financial year (April to March).
(3) Textile Mill—Calendar year (January to December).
(4) Paper Mill—July to June.

Which set of accounts would be relevant for the assessment year 1968-69 ?

SOLUTION.

The following set of accounts would be relevant for the A.Y. 1968-69 :—

(1) Cloth business—12.11.66 to 1.11.67.
(2) Contract business—1.4.67 to 31.3.68.
(3) Textile Mill—1.1.67 to 31.12.67.
(4) Paper Mill—1.7.66 to 30.6.67.

9. Assessee Sec. 2(7).

Assessee means a person by whom income-tax or any other sum of money is payable under this Act. Besides, it includes—

(a) Every person in respect of whom any proceeding under the Income-tax Act, 1961 has been taken for the assessment of his income or of the income of any other person in respect of which he is assessable, or of the loss sustained by him or by such other person, or of the amount of refund due to him or to such other person.

(b) Every person who is deemed to be an assessee under any provisions of the Act, e.g., a representative assessee is deemed to be an assessee by virtue of section 160 of the Act.

(c) Every person who is deemed to be an assessee in default under any provision of this Act, e.g., an assessee who does not pay the instalment of advance tax in time is deemed to be an assessee in default by section 218.

10. Income—Sec. 2(24).

Income-tax, as the word itself signifies, is a tax on income. But curiously enough, the Act does not adequately

define the term 'income'. Its meaning is more or less similar to the layman's understanding of its being equal to money or money's worth periodically received from a definite source. It may be taken to denote anything which comes in and that too, from some outside source. Broadly speaking, it does not include capital receipts or windfall gains or casual income. However, it would be worthwhile knowing the various items which are included in the term 'income' by virtue of Sec. 2(24) of the Act. Thus income is made to include :—

(i) Profits and gains.

(ii) Dividend.

(iii) The value of any perquisite or profit in lieu of salary taxable u/s 17 (2) & (3).

(iv) The value of any benefit or perquisite, whether convertible into money or not, obtained from a company either by a director or by a person having a substantial interest in the company, or by a relative of the director or such person, and any sum paid by any such company in respect of any obligation which, but for such payment, would have been payable by the director or such other person. "A person who has a substantial interest in the company" means a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) carrying not less than 20% of the voting power. A 'relative' in relation to an individual means, the husband, wife, brother or sister or any lineal ascendant or descendant of that individual.

(v) Any sum chargeable to income-tax under section 28 (ii) & (iii) or sec. 41 or sec. 59, as described in detail in the forthcoming chapters.

(vi) The value of any benefit or perquisite taxable u/s 28 (iv).

(vii) Any capital gains chargeable under section 45.

(viii) The profits and gains of any business of insurance carried on by a mutual insurance company or by a co-operative society, computed in accordance with the provisions of the Act.

(ix) Any annuity due, or commuted value of any annuity paid u/s 280 D.

11. Agricultural Income—Sec. 21

All types of incomes are not taxable. There are certain incomes which are absolutely non-taxable. Agricultural income is one of them. Therefore, its definition is very very important. Agricultural income means any income which fulfills the following conditions :—

(1) That it is derived from *land* ;

(2) That the land is used for *agricultural purposes* ; AND

(3) That the land is assessed to land revenue in *India* or is subject to a local rate assessed and collected by officers of the Government as such.

Any income from land which does not satisfy the above conditions is not agricultural income.

Agricultural income may be of the following kinds, viz.,

(1) *Rent or revenue* derived from such land.

(2) Income derived from land by *agriculture*, i.e., by actual cultivation of land and by means of certain basic operations in agriculture.

(3) Income derived by the *performance of some agricultural process* e.g., ginning of cotton etc.

(4) Income derived from the *sale of raw materials*.

(5) *Income from buildings* owned and occupied by the cultivators in certain cases.

The following incomes from land are not agricultural income :—

(a) Income from markets, fisheries etc.

(b) Income from the supply of water for irrigation purposes.

(c) Income from mining royalties.

(d) Income from sale of earth for brick-making.

(e) Income from forest trees of spontaneous growth by the sale of wood-bark, leaves, fruit etc.

(f) Income from stone quarries.

(g) Income of dairy or poultry farming. [However, such income is fully exempt u/s 10(27)]

In cases of Tea Estates, 60% of the income is deemed to be agricultural income—Rule 8 of the I.T. Rules, 1962.

12. Casual Income—Sec. 10(3)

Another type of non-taxable income is casual income. This means any receipts which are of a casual and non-recurring or temporary nature, unless they are (i) capital gains, or (ii) receipts arising from business, profession or occupation, or (ii) receipts by way of addition to the remuneration of an employee. For example, income from cross-word competitions, race-cource gains, lottery etc., is of casual nature and hence non-taxable.

13. Total income—Sec. 2(45).

Different types of assessees have to pay tax on different types of income according to the basis of their residence, as described in Chapter 3. Thus the term "Total income" means the total amount of income referred to in Sec. 5 computed in the manner laid down in the Act. Annuity Deposit payable by an assessee is deductible in finding out total income.

The term "total world income" which had significance only in relation with the non-residents has been omitted consequent to the change in the system of taxation of non-residents.

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The term "Gross total income" means the total income computed without making any deductions under chapter VI A e.g., for L. I. P. etc.

14. Exempted Income.

In finding out the taxable liability of an assessee, the word "exempted income" simply means that income which is included in the total income but which is otherwise exempt from income-tax. A rebate is allowed on such income at an average rate calculated with reference to his total income. Such items of income are now comparatively less as straight deduction is now allowed on several items which were previously entitled to rebate at average rate of tax.

15. Step system v. Slab system of taxation.

There have been two methods of computing income-tax on the income chargeable under the Income-tax Act, viz., the step and the slab systems of taxation. Under the step system, income-tax had to be paid on *the whole of the income at a rate applicable to the total income of the assessee.* This meant that the higher the income, the higher the rate. For example, Mr. A's income was Rs. 10,000/- and rates of income-tax were as under :—

On Rs. 1/-	to 2,000/-	@ 1 anna a rupee.	
,, Rs. 2,001/-	to 4,000/-	,, 2 annas	,,
,, Rs. 4,001/-	to 9,000/-	,, 3 ,,	,,
,, Rs. 9,001/-	and above	,, 4 ,,	,,

Thus under the step system he was required to pay income-tax on the whole of Rs. 10,000/- at 4 annas a rupee. This system was unjust and therefore, abolished from 1st April, 1939. From that date a new and more equitable system known as the slab system was introduced. Under this system *different slabs of income are charged at different rates* and not at the highest rate applicable to the total income. The rates of income-tax fixed by the Finance Act of 1968 follow

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the slab system. However, the rates of Annuity Deposit follow the step system.

16. Authorised Representative—Sec. 288.

Excepting when an assessee is required to be personally present before any income-tax authority or Appellate Tribunal, he has a right to be represented by an "authorised representative", who is any person authorised by him in writing to appear on his behalf, being

(i) A relative ; or
(ii) A person regularly employed by him ; or
(iii) Any officer of a Scheduled Bank with which the assessee maintains a current account or has other regular dealings ; or
(iv) Any legal practitioner who is entitled to practice in any civil court in India ; or
(v) Any Chartered Accountant, or any auditor within the meaning of Sec. 226 of the Companies Act, 1956 ; or
(vi) Any person who has taken The National Diploma in Commerce (with Advanced Accountancy & Auditing) awarded by the All India Council of Technical Education or Govt. Diploma in Co. Secretaryship awarded by the Dept. of Co. Affairs ; or
(vii) Any person who has acquired a degree in Commerce or Law of any Indian, Pakistan, Rangoon & certain English, Irish & Scottish Universities ; or
(viii) Any Income-tax Practitioner, practicising as such before 1-4-1962.

Disqualification :—Despite what is stated above, the following types of persons in the following circumstances are not entitled to represent an assessee :—

(1) Any person who has been employed as an Income-tax authority not below the rank of Income-tax Officer for at least three years cannot represent an assessee for at least two years from the date of resignation or retirement.

(2) Any person who has been dismissed or removed from Government service after 1-4-1938, cannot represent an assessee for all times to come.

(3) Any person who has been convicted of an offence connected with any income-tax proceeding or on whom a penalty has been imposed under this Act (other than a penalty u/s 271 (1) (i) & (ii) cannot represent an assessee for such time as the Commissioner of Income-tax may, by order, determine.

(4) Any person who has become insolvent cannot represent an assessee during the continuance of insolvency.

(5) A legal practitioner, a chartered accountant or an auditor cannot represent an assessee if he is disqualified by his professional institution.

(6) In the case of persons other than those mentioned in (5) above if the Commissioner has disqualified any person for misconduct.

Questions.

Q. 1. Write a short essay on agricultural income.

Ans. Refer to para 11.

Q. 2. Write short notes on the following :—
(a) Previous year. (b) Total income. (c) Casual income. (d) Step system & Slab system. (e) Authorised Representative. (f) Assessment year. (g) Assessee.

Ans. See (a) Para 8. (b) Para 13. (c) Para 12. (d) Para 15. (e) Para 16. (f) Para 8. (g) Para 9.

Q. 3. Under what circumstances is the Indian Income-tax Act, 1922 applicable even after 1-4-62 ?

Ans. Refer to Para 2.

CHAPTER II

INCOME-TAX AUTHORITIES & THE APPELLATE TRIBUNAL

1. Income-tax Authorities—Sections 116 to 138.

For the discharge of executive and appellate functions relating to the administration of the Income-tax Act, the following cases of Income-tax authorities are constituted :—

(A) The Central Board of Direct Taxes.

(B) Directors of Inspection.

(C) Commissioners of Income-tax.

(D) Assistant Commissioners of Income-tax :—

(i) Appellate Assistant Commissioners of Income-tax, &

(ii) Inspecting Assistant Commissioners of Income-tax.

(E) Income-tax Officers.

(F) Inspectors of Income-tax.

Provisions relating to their appointment, control, jurisdiction, powers and functions are described below.

2. The Central Board of Direct Taxes.

This is the highest executive authority constituted by the Central Board of Revenue Act, 1963 which came into force w. e. f. 1.1.64. It now consists of four members, one of whom is Chairman. It has the power to make Rules for the purpose of this Act. This is also known as the "Board". Before the 1963 Act, it was known as Central Board of Revenue and was constituted under the Central Board of Revenue Act, 1924.

3. Directors of Inspection.

The Government of India may appoint as many Directors of Inspection, as it thinks fit. They shall perform such functions of any other Income-tax authority as may be assigned to them by the Board. They are generally incharge of research, vigilance, inspection, investigation etc.

4. Commissioners of Income-tax.

The Central Government may appoint as many Commissioners of Income-tax as it thinks fit. They perform their functions in respect of such areas or of such persons or classes of persons or such incomes or such cases as the Board may direct. Generally, a Commissioner of Income-tax (C. I. T.) is in charge of a particular specified area, e. g., the Commissioner of Income-tax, U. P., etc. They are not subordinate to the Directors of Inspection. They also perform certain judicial functions e. g., u/ss. 263 & 264, as described in Chapter XXII. They can also exercise the functions of A. A. C.s in certain circumstances.

5. Appellate Assistant Commissioners of Income-tax.

The Central Government may appoint as many Appellate Assistant Commissioners of Income-tax (A. A. Cs.) as it thinks fit. They are directly under the Board. Their main function is to hear appeals against the orders of Income-tax Officers. The various orders against which they are empowered to hear appeals and the procedure thereof are stated in a chapter dealing with "Appeals & Revision" in Part IV of this book.

6. Inspecting Assistant Commissioners of Income-tax.

They are also appointed by the Central Government. They are directly under the control of the Commissioner

and perform such functions regarding inspection of Income-tax Officers, as may be assigned to them by the former. They are also empowered to issue penalty orders in case of concealment of income involving a minimum penalty of more than Rs. 1,000. They can also be empowered by the Commissioner to exercise the powers of Income-tax Officers.

7. Income-tax Officer.

Income-tax Officers are of two types—Class I & Class II. Class I Income-tax Officers are appointed by the Central Government while the Class II Income-tax Officers are appointed by the Commissioner of Income-tax subject to the rules made by the Central Government. An Income-tax Officer is the most important official of the Department. He is the actual assessor who initiates assessment, calls for a return from assessees within his jurisdiction, makes the assessment, collects revenue and makes the refunds. Within the limits of the area assigned to him the I.T.O. has jurisdiction over the assessees either according to the principal place of business or profession or according to the place of residence. No person is entitled to call in question the jurisdiction of an I.T.O. after the expiry of one month from the date on which he has made a return u/s 139 (1) or after the completion of the assessment, whichever is earlier. In case of non-filing of return as aforesaid, the jurisdiction cannot be challenged after the expiry of the time allowed by the notice u/s 139 (2) or u/s 148. Vast powers of search and seizure of documents, books of accounts, bullion, money and jewellery etc. have now been conferred upon the I.T. Department u/ss. 132 & 132A.

8. Inspectors of Income-tax.

They are appointed by the Commissioner of Income-tax. They perform such functions in the execution of this

Act as are assigned to them by the Income-tax Officer or by any other Income-tax authority under whom they are appointed to work.

9. New provisions re : Functional distribution of work amongst I. T. Os.—Sections 121, 123, 124, 125, 127, 128, 130A :

The Finance (No. 2) Act, 1967 has introduced amendments to the various sections of the I.T. Act, 1961 with a view to introduce "Functional distribution of work" amongst I.T.Os. So far the normal pattern of distribution and allocation of work amongst I.T.O.s has been to assign to an I.T.O. all the functions to be performed in respect of a particular assessee or assessees within his jurisdiction. In view of the position that under this 'unitary' system of working, the Income-tax Officer having jurisdiction in respect of any area or group of assessees has to perform all the functions of an Income-tax Officer in relation to that area or those assessees, such as assessment of the income (including issue of statutory notices and determination of the tax liability), collection and recovery of tax, and various other miscellaneous functions (e.g., taking proceedings for the demand and collection of 'advance tax', giving effect to appellate orders, etc.), some of these functions do not receive adequate and timely attention. Under the functional system of working distinctive functions in relation to the same case or group of cases, such as assessment, collection and recovery of taxes, and miscellaneous functions, are assigned to different Income-tax Officers selected for such functions, having regard to their experience, capability, aptitude and other relevant administrative considerations. The main advantages of the functional system of working are (i) specialisation in functions ; (ii) timely attention to, and due concentration on, all important functions, thus avoiding a situation under which the collection and recovery function or issue of refunds due in consequence of appellate orders, etc., may not be promptly attended to ; (iii) streamlining the flow of work amongst

Income-tax Officers (and also the ministerial staff in Income-tax Offices) to bring about quicker disposal of assessments and other proceedings whereby the revenue due is collected well in time and the risk of a part of it becoming irrecoverable, through lapse of time, is minimised. Besides, the functional system of working also enables the reduction of work in compilation of tax statistics and maintenance of various registers and records, as these can be compiled and maintained under the functional system, for the Income tax District or the Income-tax Range as a whole, instead of for each Income-tax Officer, separately, which has to be done under the 'unitary' system.

In order to facilitate the allocation and distribution of work amongst Income-tax Officers on the functional basis, it is proposed to make specific provisions in the matter in the Income-tax Act. The substance of the main provisions is as follows :

(i) Where two or more Income-tax Officers are appointed with reference to the same area or the same assessees, they will have concurrent jurisdiction in respect of that area or those assessees, and will perform such functions in relation to the said area or assessees as the Commissioner, or the Inspecting Assistant Commissioner of Income-tax authorised by the Commissioner for this purpose, may specify, in a general or special order in writing, for the allocation and distribution of the work to be performed.

(ii) To enable the maximum utilisation of the existing man-power resources of the Income-tax Department and to release Income-tax Officers for being deployed on comparatively important functions, the Commissioner will be empowered to assign comparatively simple or minor functions of an Income-tax Officer (such as working relating to "Advance tax", collection of tax in simple cases, giving effect to appellate orders, rectification of errors, etc.) to Inspectors or members of the ministerial staff, by issue of a general or

special order, *subject to such conditions, restrictions or limitations as may be specified in such order.* Where the Commissioner seeks to assign the more important functions of an Income-tax Officer, such as that of making assessments, re-opening assessments, levy of penalties, etc., to lower authorities, e.g., where he seeks to authorise Inspectors of Income-tax to make assessments in small income cases, he will be able to do so only after he has been authorised by the Board in this behalf by a general or special order, in writing.

In line with the concept of functional distribution of work amongst Income-tax Officers, it is also proposed to make provisions in the Income-tax Act, enabling the Board to distribute and allocate work on the functional basis amongst two or more Commissioners appointed for the same area or the same assessees, and also enabling the Commissioners, similarly, to allocate and distribute work on the functional basis amongst two or more Inspecting Assistant Commissioners, appointed for the same area or the same assessees.

II. Appellate Tribunal—Sec. 252.

10. It is appointed by the Central Government and consists of as many persons as the Government thinks fit. It consists of two types of members : (a) Judicial Members and (b) Accountant Members. *Judicial Member* is a person who has for at least ten years held a civil judicial post or who has been a member of the Central Legal Service (not below Grade III), for at least three years or who has been in practice as an advocate for at least ten years. *An Accountant Member* is a person who has for at least ten years been in practice as a Chartered Accountant or who has served as an Assistant Commissioner of Income-tax for at least three years. The Central Government generally appoints a Judicial Member as its President. The Tribunal is divided into several Benches consisting of one Judicial Member and one Accountant

Member. Each Bench hears appeals (as described in Part IV later on) as per the area or jurisdiction allotted to it.

III. Disclosure of information—Sections 137, 138 & 280.

11. Till 31. 3. 64, Income-tax assessment and recovery proceedings were treated as confidential. No public servant employed in the execution of this Act was permitted to disclose any particulars contained in any statement, return, accounts, documents, evidence, affidavit, deposition or record connected with assessment or recovery proceedings etc. No court (except in special cases given in sec. 137) was entitled to require any public servant to produce before it any such return, documents or record or to give evidence before it in respect thereof. Under section 280 failure to observe these secrecy provisions made a public servant liable to imprisonment upto six months and also to fine. Section 137 has been omitted by the Finance Act, 1964. The amended Sec. 138 now provides that any person may by making an application to the Commissioner in the prescribed form get any information relating to any assessee in respect of any assessment made either under the new Act or the old Act, on or after 1-4-1960, provided the Commissioner is satisfied that it is in the public interest so to do. The decision of the Commissioner in this behalf is final and cannot be called in question in any court of law. In certain notified cases the Central Govt. may prohibit the disclosure of some information etc., re : some classes of assessees. No fee has now to be paid for getting such information. The Finance (No. 2) Act, 1967 has provided that the C.I.T. may furnish information, without an individual application in this regard to the Exchange Control Authority or other tax authorities. However, the particulars re : Voluntary disclosure u/s 68 of the Finance Act, 1965 or u/s 24 of the Finance (No. 2) Act, 1965 cannot be disclosed to the public or any court of law.

Questions.

Q. 1 Write a short essay on Income-tax authorities.

Ans. Refer to paras 1 to 9.

Q. 2. Write a short note on "Appellate Tribunal."

Ans. See para 10.

Q, 3. Write a brief account on the secrecy provisions in the Income-tax Act, 1961 as amended from time to time.

Ans. See para 11.

CHAPTER III

BASIS OF CHARGE

I. Residence of Assessees

1. Classification of persons liable to tax on the basis of their residence—Section 6.

The tax liability of a person is determined by reference to his residence in India in the previous year. For this purpose assessees are divided into three classes, viz.,

(A) Resident but not ordinarily resident ;
(B) Resident and ordinarily resident ; *and*
(C) Non-resident.

2. (i) Individuals.

(A) Resident but not ordinarily resident—Sec. 6(1).

An individual is resident but not ordinarily resident in India in any previous year if he fulfills *any one* of the following three conditions :—

(1) That he is in India in that year for 182 days or more.

(2) That he maintains or causes to be maintained for him a dwelling place in India in that year for 182 days or more *and* is in India for 30 days or more in that year.

(3) That he has been in India for atleast 365 days in the four years preceding that year *and* is in India for 60 days or more in that year.

(B) Resident & ordinarily resident or "Ordinary Resident"—Sec. 6(6).

An individual becomes an ordinary resident in India if he fulfills *all the three* conditions laid down below :—

(1) That he is resident in that year as defined in para 2(i) (A).

(2) That he has been resident as defined in para 2(i) (A) above for atleast *9 out of the 10 years* previous to that year.

(3) That he has been in India for a period amounting in all to *730 days or more in the 7 years* preceding that year.

N.B. The period of 182 days etc., referred to above need not be continuous or at the same place.

(C) **Non-Resident.**

An individual is non-resident in India in any year *if he does not fulfil any of the conditions* laid down in para 2(i) (A).

3. (ii) Other Assessees.

(1) *A Hindu Undivided Family* is resident in India if any portion of the control and management of its affairs is situated here. It is non-resident if the control and management of its affairs is situated wholly outside India. It becomes ordinarily resident if the *karta* is ordinarily resident here.

(2) *A firm or other association of persons* is resident in India if any portion of the control and management of its affairs is situated here. If this is so, it also becomes ordinarily resident. If the control and management of its affairs is situated wholly outside India, it becomes non-resident.

(3) *A company* is resident in India if *any one* of the following two conditions is fulfilled :—

(a) The control and management of its affairs is situated *wholly in India, or*

(b) It is an Indian Company.

A Company is Ordinary resident if it is resident in India.

(4) *Every other person* is resident in India unless the control & management of his affairs is situated wholly outside India.

PROBLEM No. 3.

Please state what the residential status under the Income-tax Act of the following persons for the assessment year 1968-69 will be, giving reasons for your answers :—

(a) Mr. A came to India for the first time from the U. S. A. on the 30th June, 1961. He stayed here at a stretch for 3 years and left for Japan on 1st July, 1964. He returned to India on 1st April, 1965 and remained in India till 31st July, 1966 when he went back to the U. S. A. He again came to India taking an employment with an American concern on 31st January, 1968.

(b) Shri Ram Prakash, Individual, a resident of Amritsar left India for England for higher studies on 1st August, 1964. He, however, maintained a dwelling place for him at Amritsar throughout the period when he was abroad. During the winter vacation, he came to India twice, once on 20th Dec., 1965 and again on 20th Dec., 1966 and stayed at the dwelling place maintained at Amritsar. During the year ended 31st March, 1968 he did not come to India at all.

(c) A & Co., is an Indian Company carrying on business in India as well as in Kenya. The control and management of its affairs was not wholly situated in India during the year ended 31st March, 1968. Its income accruing or arising in Kenya in that year far exceeded its income accruing or arising in India.

Regarding (b) above, what difference would it make if Shri Ram Prakash had been in India during the year ended 31st March, 1968 on a visit say, for 30 days.

SOLUTION.

(a) It is presumed that the previous year in respect of which the residential status is to be determined is the year ended on 31st March, 1968. According to the particulars contained in the question, it is clear that Mr. A had been in India for a period of 944 days as shown below which

exceeds 365 days, within the four years immediately preceding the previous year and also remained in India from 31st Jan., 68 to 31st March, 68 :—

				No. of Days
FROM	1-4-63	to	31-3-64	366
	1-4-64	to	30-6-64	91
	1-4-65	to	31-3-66	365
	1-4-66	to	31-7-66	122
				944

His residence in India is for 60 days during the previous year 1967-68. As such, his residential status for the assessment year 1968-69 will be that of a *resident* under section 6 of the Income-tax Act. However, since Mr. A came to India for the first time only in the financial year 1961-62 it is evident that he had not been resident in India in 9 out of 10 years preceding the previous year under consideration. His status for income-tax purposes, therefore, would be '*Resident but not ordinarily resident*'.

(b) The status of Shri Ram Prakash will be that of a *non-resident* as he has not been in India during the previous year even for a day,

If, however, Shri Ram Prakash had been in India during the previous year, even for 30 days. a difference in his residential status would occur. In that case the provisions contained in Sec. 6 (1) (b) would be attracted, as the dwelling place would have been maintained for a period exceeding 182 days and he would have been in India for 30 days during that year. Further, in that case Shri Ram Prakash would have the status of a '*resident & ordinarily resident*' individual for income-tax purposes, as he had been resident in India in all the ten previous years prior to the previous year under consideration and had also been in India for more than 730 days in the seven years preceding the previous year ended on 31-3-68.

(c) As the company satisfies the conditions laid down in Sec. 6 (3), the company is resident in India. A company is

always *resident and ordinarily resident* for income-tax purposes if it is resident in India. Thus in this case the A & Co. Ltd. is *resident & ordinarily resident* in India in the previous year ending on 31-3-68.

II. Scope of total income Sec.—5.

4. The classification of various assessees on the basis of their residence in India is not an end in itself. The purpose is quite obvious. The taxation liability of various types of assessees varies with their residence. The table given below will show the difference in the incidence of taxation on different assessees on the basis of residence :—

Scope of Total Income or Incidence of Taxation—Sec. 5.

(A) Resident and ordinarily resident	(B) Resident *but non* ordinarily resident.	(C) Non-resident
Such persons are charged on :—		
I. Indian Income :—		
1. All income received or deemed to be received in India in the previous year by or on behalf of such person.	1. The same as in para 1 of col. (1).	The same as in para 1 of col. (1)
2. Income accruing or arising or deemed to accrue or arise to him in India in the previous year.	2. The same as in para 2 of col. (1)	2. The same as para 2 of col. (1).

II. **Foreign Income.**

3. Income accruing or arising outside India in the previous year (Not received in India).	3. Income accruing or arising outside India *and derived from a business controlled in or a profession set up in India.*	3. nil.

(N. B. There is no tax on foreign remittances of past profits in any case).

On a careful perusal of the above table we find that a non-resident has to pay tax only on his Indian income while residents are to pay tax on their Indian as well as foreign income subject, of course, to certain conditions described above.

5. **Income deemed to be received**—Sec. 7.

The following incomes are deemed to be received in the previous year :—

(i) The annual accretion in the previous year to the balance at the credit of an employee participating in a recognised provident fund as consists of—
   (a) Contributions made by the employer in excess of 10% of the salary of the employee ; And
   (b) Interest credited to on the balance to the credit of the employee in so far as it exceeds $\frac{1}{3}$rd of the salary of the employee or is allowed at a rate higher than the rate fixed by the Central Government, i.e., 6%.

(ii) The transferred balance in a recognised provident fund in accordance with the Rules.

6. **Income deemed to accrue or arise in India**—Sec. 9.

The following income shall be deemed to accrue or arise in India :—

(i) All income accruing or arising, whether directly or indirectly, through or from any **business connection in India** or through or from any property in India, or through or from any asset or source of income in India, or through or from any money

lent at interest and brought into India in cash or in kind or through the transfer of a capital asset situated in India. Foreigners are exempt from tax on any income arising from the purchase of goods in India and export thereof.

(ii) Income which falls under the head "Salaries" if it is earned in India.

(iii) Income charged under the head "Salaries," payable by the Government to a citizen of India for service outside India.

(iv) A dividend paid by an Indian company outside India.

PROBLEM No. 4.

The details of the income of an assessee for the previous year ended 31st Dec., 1967, are as follows :—

Indian Income.

(a) Salary Rs. 725, and dearness allowance Rs. 100/- per month and bonus Rs. 1,600 p.a.

(b) Interest from tax-free Government securities Rs. 500 and from other Government securities Rs. 1,000 (gross).

(c) A loss of Rs. 1,000 has been computed from house property.

(b) Share of profits from an unregistered firm Rs. 15,000.

(c) Dividends (gross) Rs. 600 and interest on bank deposits Rs. 400.

(f) Share of income from an H. U. F. as a member thereof Rs. 15,000.

Foreign Income.

(a) Income in Africa of this year brought in India Rs. 5,000.

(b) Income arising in Iran from a business (controlled in India) Rs. 10,000 and from property Rs. 2,000.

During the year Rs. 10,000 was brought into India out of untaxed income arising in Africa in the year 1961.

Compute his total income for the Assessment year 1968-69 on the footing that (a) he is a resident and ordinarily resident, (b) he is a resident but not ordinarily resident, or (c) he is a non-resident.

SOLUTION.

Computation of total income for the A.Y. 1968-69

(In Rs.)

		(a)	(b)	(c)
	Indian Income :			
1.	Salary	11,500	11,500	11,500
2.	Interest on securities : Taxed...	1,000	1,000	1,000
	Tax-free...	500	500	500
3.	Property (Loss) ...	1,000	1,000	1,000
4.	Business (profits from U.R.F.) ...	15,000	15,000	15,000
5.	Other sources : Dividends (gross) ...	600	600	600
	Bank Interest ...	400	400	400
		28,000	28,000	28,000
	Foreign Income :			
1.	Past untaxed African income brought into India during the year—exempt.	—	—	—
2.	Income in Africa of this year brought in India (on accrual basis).	5,000	—	—
3.	Income arising in Iran not received in India. ...	12,000	10,000*	—
	Total income...	45,000	38,000	28,000

*(from a business controlled from India only.)

N. B.—Share of income from an H.U.F. of Rs. 15,000 is fully exempt.

Questions.

Q. 1. The Income-Tax Act has divided the tax-payers into three distinct categories, viz., (a) Resident and ordinary Resident, (b) Resident but not ordinarily Resident, and (c) Non-resident. Explain fully the basis of determining the above in the case of an Individual, Firm, Hindu Undivided Family and Company. Point out the difference in their tax liability.

Ans. See para 1 to 4 above.

Q. 2. Assuming the following particulars regarding the taxable income or deductible loss of a person for the previous year ended 31st December, 1967 calculate his total income for the A. Y. 1968-69 when he is (i) A resident and ordinary resident, (ii) a resident but not ordinary resident, and (iii) a non-resident.

Income arising in India :—

Salary Rs. 8,000, Interest on securities Rs. 2,000. Profits from business Rs. 5,000. Dividend (gross) Rs. 1,000. A loss of Rs. 1,000 has been computed from property.

Income arising outside India :—

Amount of foreign income of the previous year actually remitted to India 12,000. Unremitted income from business Rs. 8,000 (both controlled from India). Unremitted income from property Rs. 2,000.

Ans. Total income : (i) Rs. 37,000, (ii) Rs. 35,000, (iii) Rs. 15,000.

Q. 3. Write short notes on : (a) Income deemed to be received. (b) Income deemed to accrue or arise in India.

Ans. See paras 5 & 6.

Chapter IV

EXEMPTIONS, RELIEFS AND TAX CREDIT CERTIFICATES

1. Income-tax Act, the tax-payers complain, is a very harsh Act. But this statement contains half truth only for, the Act allows several kinds of exemptions, allowances, deductions, rebates and reliefs to the assessees. Sometimes the exemption is a complete one while on other occasions it is partial only. This is usually expressed in the following words :—

"While the Income-tax Act allows certain incomes to be exempt from income-tax and which are not to be included in the total income, certain other incomes are fully or partially exempt from income-tax but are to be included in the total income of the assessee."

This chapter deals with different types of exemptions, rebates and reliefs scattered all over the Income-tax Act. For the sake of *convenience* the Chapter is divided into three parts :—

I. Exemptions.
II. Reliefs.
III. Tax Credit Certificates.

Incomes which are totally or partially exempt from tax are described under "Exemptions," while incomes which are subject to tax but which are entitled to rebate or relief at an average rate of tax in certain circumstances are discussed under "Reliefs."

It may be mentioned here that the Finance (No. 2) Act, 1967 has made several amendments to the I.T. Act in these matters, some of which are applicable from the A.Y. 1967-68 and some from the A.Y. 1968-69 as discussed below. Similarly, the Finance Act, 1968 has made several amendments to the I.T. Act some of which are applicable for the A.Y. 1968-69 and some for the A.Y. 1969-70.

I. EXEMPTIONS.

2. The Income-tax Act has given a list of several types of income which are either fully exempt from tax or partially exempt from tax. They have been divided into the following types :—

A. Fully exempted income, i.e., income which are exempt from income-tax and are not to be included in the total income at all.

B. Partially exempted income, i.e., incomes which are included in the total income for rate purposes but are themselves exempt either wholly or partially from income-tax.

A. Fully Exempted Income—Sections 10 to 13.

(i) Income of Religious & Charitable Trusts & Institutions : Sections 11 to 13.

3. The Act has divided Full Exemptions into two parts i.e., incomes of religious & charitable trusts and institutions and other incomes. Besides, certain other incomes are also fully exempted as per provisions contained in other Acts. The following types of income relating to religious and charitable trusts and institutions are completely exempt from tax, i.e., not even included in total income for any purpose whatsoever :—

(1) Income derived from property held under trust *wholly* for charitable or religious purposes to the extent to which such income is applied to such purposes in India. Where any such income is accumulated for application to such purposes in India the exemption will be granted to the extent to which the income so accumulated is not in excess of 25% of such income or Rs. 10,000, whichever is higher.

(2) In case of trusts created before 1-4-62, income from property held under trust *in part only* for such purposes, such income as is applied to such purposes in India is exempt. However, where any such income is finally set apart for application in India in future, then

the income so finally set apart as is not in excess of 25% of the income alone will be exempt. This restriction on accumulation of income will not apply if such trust intimates to the I.T.O. in advance the purposes for which such income is to be accumulated. However, the period of accumulation cannot exceed 10 years.

(3) Income from property held under trust created on or after 1-4-52 for a charitable purpose which tends to promote international welfare in which India is interested is exempt to the extent to which such income is applied for such purposes outside India.

(4) Income from property held under trust for charitable and religious purposes created before 1-4-52 is exempt to the extent to which such income is applied to such purposes outside India.

(5) Any income of a religious and charitable trust or institution derived from voluntary contributions and applicable solely to charitable or religious purposes is also exempt.

Note : (a) For the purposes of items no. (1) & (2), in computing 25% of the income from any such property, the income (from such property) for the year immediately preceding the previous year may be adopted, if that income is higher than the income for the relevant previous year.

(b) Contributions described in item (5) above are deemed to be income derived from property for the purposes of items (1) & (2) above.

(c) For the purposes of the above items, "property held under trust" includes a business undertaking so held if the business is carried on in the course of carrying out the primary objects of the trust.

(d) Income of the charitable or religious trust or institution is not exempt if the income is not meant for the benefit of public and is for the benefit of any particular religious community or caste. If the author of the trust or the founder of the institution or any substantial contributor or any of his relative or any member of H. U. F., as the case may be, derives

directly or indirectly more than 25% benefit from the income or property of the trust etc., the exemption will not be granted. The latter restrictions were imposed by the Finance Act, 1966.

PROBLEM No. 5.

X is a charitable institution exempt u/s 11 of the Income-tax Act. Its income from property is Rs. 30,000 for the previous year ended 31st March, 1968. During the year it received Rs. 50,000 as contribution from another charitable institution exempt u/s 11. Indicate the amount which it can accumulate so as to make the income exempt u/s 11.

SOLUTION.

The X charitable institution cannot accumulate more than 25% of its income held under trust, i.e., Rs. 30,000+ Rs. 50,000=25% of Rs. 80,000=Rs. 20,000 so as to make the income exempt u/s 11.

(ii) Other Income—Sec. 10.

4. The following types of incomes are completely exempt from tax (income-tax and surcharge) and are also not to be included in the total income of any assessee for any previous year :—

(1) **Agricultural Income** (as described in Chapter I, para 11).

(2) **Receipts from H.U.F.**—i.e., any sum received by an individual as a member of a Hindu undivided family, where such sum has been paid out of the income of the family, or, in the case of any impartible estate, where such sum has been paid out of the income of the estate belonging to the family.

(3) **Casual income** (as described in Ch. I, para 12).

(4) **Certain incomes of a non-resident**—In the case of a non-resident, any income from interest on, or from premium on the redemption of any bonds issued by the Central Government under a loan agreement with the International Bank for Reconstruction & Development or the Development Loan

Fund of the U.S.A. or by any industrial undertaking or financial corporation in India under the said agreements, which is guaranteed by the Central Government and on such securities as the Central Government may notify in Official Gazette.

(5) **Interest on Bank Deposits of a non-resident**—Any interest on money standing to the credit of a non-resident account in any bank in India, in accordance with the Foreign Exchange Regulation Act, 1947. The Finance Act, 1968 has amended s. 10 (4A) w.e.f. 1968-69 to secure that this exemption is given only in respect of "Non Resident (external) A/c" in a Bank.

(6) **Value of travel concession**—The value of travel concession or assistance received by or due to any person, *being citizen of* India, from his employer for himself, his wife and children, in connection with his proceeding on leave to his home district in India.

(7) **Certain incomes of non-citizen of India**—The following types of incomes in case of an individual who is not a citizen of india :—

(i) Passage moneys or the value of any free or concessional passage received by or due to such individual from his employer for himself, his wife and children in connection with his proceeding on home leave out of India.

(ii) The remuneration received by him as an ambassador, high commissioner, envoy, minister, charge D' affairs commissioner, counsellor or the secretary, adviser or attache of an embassy etc., of a foreign State for service in such capacity.

(iii) The remuneration received by him as a *consul de accrriere* by whatever name called, of a foreign State for service in such capacity.

(iv) The remuneration received by him as a trade commissioner or other official representative in India of the Government of a foreign State, if the remuneration of the corresponding officials, if any, of Indian Govt. enjoys a similar exemption in that country.

(v) The remuneration received by him as a member of the

staff of any of the officials referred to in (ii) to (iv) above, if the member—

(a) is a subject of the country represented ; and (b) is not engaged in any business or profession or employment in India, otherwise than as a member of such staff and further in the case of (iv) if similar facilities are granted to the corresponding officials of the Indian Govt. in his country.

(vi) The remuneration received by him as an employee of a foreign enterprise for services rendered by him during his stay in India, provided the following conditions are fulfilled :—

(a) the foreign enterprise is not engaged in any trade or business in India ;

(b) his stay in India does not exceed 90 days in the previous year ; and

(c) such remuneration is not liable to be deducted from the income of the employer chargeable under this Act.

(vii) The remuneration due to or received by him chargeable under the head "Salaries" for services rendered as a technician in the employment of the Government or of a local authority or of any corporation set up under any special law or in any business carried on in India, if he was not resident in any of the four financial years immediately preceding the financial year in which he arrived in India to the extent mentioned below :—(a) where his contract of service is approved by the Central Government before the commencement of his service or within one year of such commencement—(i) in the case of a technician who has special knowledge and experience in industrial or business management techniques, such remuneration due or received by him during the period of six months commencing from the date of his arrival in India, (ii) in the case of any other technician, such remuneration due to or received by him during the 36 months commencing from the date of his arrival in India, and where any such person continues to remain in employment in India with the approval of the Central Govt. obtained before the 1st October of the relevant assessment year after the expiry of 36 months and the tax on his salary income is paid by the employer to the Central Govt. the tax paid by the

employer for a further period of 60 months. This was amended by the Finance Act, 1965.

(b) In any other case, such remuneration due to or received by him for a period of 365 days in all commencing from the date of his arrival.

(viii) Any income chargeable under the head "Salaries" received by or due to a non-resident for services rendered in connection with his employment on a foreign ship where his total stay in India does not exceed 90 days.

(ix) The Finance Act, 1964 provides that the salaries of foreign professors or teachers will be exempt like the salaries of foreign technicians as stated in (vii) (a) (ii) above provided his contract of service is approved by the Central Govt. on or before 1-10-64 where such a teacher etc., commences service before 1.4.64 and before the commencement of service or within 1 year thereof in any other case.

(8) **Allowances for foreign service**—Any allowances or perquisites paid or allowed as such outside India by the Govt. to a citizen of India for rendering service outside India.

(9) **Re: Co-operative technical assistance programmes**—(a) In the case of an individual who is assigned to duties in India in connection with any co-operative technical assistance programmes and projects in accordance with an agreement entered into by Central Government and the Government of a foreign State—(a) the remuneration received by him directly or indirectly from the Govt. of that foreign State for such duties, and

(b) any other income of such individual which accrues outside India, and is not deemed to accrue or arise in India, in respect of which such individual is required to pay any income or social security tax to the Government of that foreign State.

(10) **Income of the member of the family**—Of any such individual referred to in (a) above, accompanying him in India, which accrues or arises outside India and is not deemed

to accrue or arise in India, in respect of which such member is required to pay any income or social security tax to the Government of the foreign State.

(11) **Death-cum-retirement gratuity**—Any death-cum-retirement gratuity received under the revised Pension Rules of the Central Government or under any similar scheme of a State Government, a local authority or a corporation established by a Central, State or Provincial Act or any payment of retiring gratuity received after 1-6-53 under the New Pension Code applicable to the members of the Defence Services ; or any other gratuity not exceeding ½ month's salary for each year of completed service, calculated on the basis of the average salary for the 3 years immediately preceding the year in which the gratuity is paid, subject to a maximum of Rs. 24,000 or 15 month's salary so calculated, whichever is less.

PROBLEM No. 6.

Mr. A, Manager of Asha Publishing House Pr. Ltd., after 35 years' service retired on 15th May, 1968. The average salary drawn by him during the last three years was Rs. 1,000 p.m. State the exemption from tax in respect of retirement gratuity received by him, if the amount in question is (i) Rs. 10,000. (ii) Rs. 15,000. (iii) Rs. 25,000.

SOLUTION.

The amount of **gratuity exempt from tax** u/s 10 in the three cases is given below :—

(i) Rs. 10,000, as this sum is less than Rs. 24,000, the maximum sum allowed or 15 months' average monthly salary, i.e., Rs. 15,000.

(ii) Rs. 15,000, as it is equal to 15 months' average monthly salary drawn by him (Rs. 1,000 × 15).

(iii) Rs. 15,000, as in equal to 15 months' average monthly salary drawn by him and is less than Rs. 24,000 which is the maximum sum exempted u/s 10(10) of the I.T. Act, 1961.

(12) **Commuted value of Pensions**—The Finance (No. 2) Act, 1965 has with effect from 1-4-1962 provided for a new class of total exemption to the commuted value of pensions. The following types of commuted pensions will be so exempt :—

(i) Any payment in commutation of pension received under the Civil Pensions (Commutation) Rules of the Central Govt. or under any similar scheme applicable to the members of the Defence Services or to the employees of a State Government, a local authority or a corporation established by a Central State or Provincial Act ;

(ii) Any payment in commutation of pension received under any scheme of any other employer, to the following extent only :—

(a) In a case where the employee receives any gratuity, the commuted value of $\frac{1}{3}$rd of the pension which he is normally entitled to receive, and

(b) In any other case, the commuted value of $\frac{1}{2}$ of such pension.

The commuted value has to be determined having regard to the age of the recipient, the state of his health, the rate of interest and officially recognised tables of mortality. The above maximum limits of payment would not, however, apply in respect of any such payment made before 19-8-1965.

(13) **Any payment from a provident fund** to which the Provident Funds Act, 1925 applies or any other P.F. set up by the Central Govt. so notified in official gazette.

(14) **The accumulated balance** due and becoming payable to an employee participating in a recognised provident fund to the extent provided in the Rule 8 of part A of the IV Schedule.

(15) **Any payment from a superannuation fund** made on the death of a beneficiary or in lieu of or in commutation of an annuity or by way of refund of contributions on the death of a beneficiary or on his leaving the service etc. This was amended by the Finance Act, 1965.

(16) Any special allowance or benefit, not being in the nature of an entertainment allowance or other perquisite u/s 17 (2) specially granted to meet expenses wholly, necessarily and exclusively incurred in the performance of the duties of an office or employment or profit, to the extent to which such expenses are actually incurred for that purpose.

(17) House rent allowance—Any special allowance specifically granted to an assessee by his employer to meet expenditure actually incurred on payment of rent (by whatever name called) in respect of residential accommodation occupied by the assessee to such extent (not exceeding Rs. 300/- p. m.) as prescribed by the rules having regard to the area or place in which such accommodation is situate and other relevant considerations. The exemption has been introduced by the Direct Taxes (Amendment) Act, 1964 passed on 6-10-64. The details have been explained in the next chapter dealing with "Salaries."

(18) Certain types of interest payment etc.

(i) Monthly payment to the 15-year Annuity Certificates issued by or under the authority for the Central Government or such other annuity certificates issued by or under the authority of the Government.

(ii) Annual payment on National Defence Gold Bonds, 1980. This has been added by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1965.

(iii) Interest on Treasury Savings Deposit Certificates, Post Office Cash Certificates, P.O. National Saving Certificates, National Plan Certificates, 12-year National Savings Certificates and such other certificates issued by the Central Government as may be notified in the Official Gazette, and interest on deposits in P.O. Savings Banks and bonus in respect of deposits under the P.O.S. B. (C.T.D.) Rules, 1959.

(iv) Interest on securities held by the Issue Department of the Central Bank of Ceylon constituted under the Ceylon Monetary Law Act, 1949.

(v) The Finance Act, 1968 has w.e.f. 1968-69 provided for interest on fixed deposits under a scheme to be notified by the Central Govt. to the extent and to the maximum amount mentioned in the scheme.

(vi) Interest payable—(a) by Govt. or a local authority on moneys borrowed by it from sources outside India ;

(b) by an industrial undertaking in India on money borrowed by it under a loan agreement entered into with any such financial institution in a foreign country as may be approved by the Central Government ; and

(c) by an industrial undertaking in India on any moneys borrowed or debt incurred by it in a foreign country in respect of the purchase outside India of raw materials or capital plant and machinery, to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the Central Govt. in this behalf, having regard to the terms of the loan or debt and its repayment.

(19) **Scholarships,** granted to meet the cost of education.

(20) **Any daily allowance** received by any person by reason of his membership of Parliament or of any State Legislature or of any Committee thereof.

(21) **Gallantry awards**—Any payment made, whether in cash or in kind, by the Central Government or any State Govt. in pursuance of gallantry awards instituted or approved by the Central Government.

(22) **Privy purse**—Any amount received by the Ruler of an Indian State as privy purse under Article 291 of the Consititution.

(23) **The income of a local authority** which is chargeable under the head "Interest on Securities," "Income from house property," "Capital gains" or "Income from other sources" or from a trade or business carried on by it which accrues or arises from the supply of a commodity or service within its own jurisdictional area.

(24) **Any income of a scientific research association** for the

time being approved for the purpose of sec. 35 (1) (ii) and which is applied solely to the purpose of the association.

(25) **Any income of a University** or other educational institution existing solely for educational purposes and not for purposes of profit.

(26) **Income of Sports & Games associations etc.**—Any income of an association or institution established in India having as its objects the control, supervision, regulation or encouragement in india of the games of cricket, hockey, football, tennis or such game or sports as the Central Govt. may specify in this behalf in the Official Gazette. This is, however, subject to the following conditions :—

(i) The association or institution applies its income or accumulates for application, solely to the object for which it is established.

(ii) No part of the income is distributed in any manner to the members except as grants to any association or institution affiliated to it.

(iii) The association or institution is, for the time being approved for this clause by the Central Government.

(27) **Income of Professional associations etc.**—Any income (other than income chargeable under the head "Interest on Securities" or "Income from house property" or any income received for rendering specific services or income by way of interest or dividends derived from its investments) of an approved association or institution established in India having as its object the control, supervision, regulation or encouragement of the professions of law, medicine, accountancy, engineering or architecture or such other profession as the Central Govt. may notify. The income so exempted must, however, be solely applied to the objects for which it is established.

The new clause re : this exemption has been inserted by the Finance (No. 2) Act, 1965 w. e. f. 1-4-1962.

(28) **Income of a trade union**—Any income chargeable under the head "Interest on securities," "Income from house property" and "Income from other sources" of a registered union within the meaning of the Indian Trade Unions Act, 1926, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen & workmen.

(29) (i) **Interest on securities** which are held by or are the property of, any provident fund to which the Provident Funds Act, 1925 applies, and any capital gains of the fund arising from the sale, exchange or transfer of such securities.

(ii) **Any Income** received by the trustees on behalf of a recognised provident fund or approved superannuation fund.

(30) **Income of Scheduled Tribes**—Any income which accrues or arises to any member of Scheduled Tribe who is not in the service of the Government.

(31) **Income of Ladakh resident**—Any income which accrues or arises to any person (other than a Govt. servant) from any source in the district of Ladakh or outside India in any previous year relevant to the A. Y. before the A. Y. 1970-71 where such person is resident in the said district in that previous year as also resident in the previous year relevant to the A. Y. 1962-63.

The clause re : this total exemption was inserted by the Finance (No. 2) Act, 1965, w. e. f. 1-4-1962.

(32) **Income from livestock breeding etc.**—Any income derived from a business of livestock breeding, or poultry or dairy farming for an indefinite period as amended by the Finance (No. 2) Act, 1967.

(33) **Tax credit certificate**—The amount adjusted or paid to an assessee in respect of a tax credit certificate under chapter XXII B of the Act or any scheme made thereunder. This was

introduced by the Finance Act, 1965 and modified by the Finance (No. 2) Act, 1965.

(34) **Income of a statutory marketing authority**—From any income derived from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities —s. 10 (29).

(iii) Income from units of the Unit Trust of India.

5. Another class of income which is totally exempt from income-tax and which is not to be included in the total income is the income received by an individual unit holder in respect of units received by him from the Unit Trust of India during the previous year upto Rs. 1,000 of such income. Where such income exceeds Rs. 1,000, the amount of exemption will be limited upto Rs. 1,000 only.

This exemption is not contained in the Income-tax Act, 1961 but is contained in sec. 32 of the Unit Trust of India Act, 1963, as modified by sec. 53 of the Finance Act, 1966.

(iv) Investment of undisclosed income in Gold Bonds.

6. Another class of income which is totally exempt from income-tax and which is not to be included in the total income is the undisclosed income utilized for purchase of gold and subscription thereof in the National Defence Gold Bonds, 1980. Such gold should be tendered prior to the detection of such income by the I. T. O. or the seizure of such gold. The exemption was available from 20.10.65 for a short period only.

These provisions are contained in section 8 of the Taxation Laws (Amendment and Miscellaneous Provisions), Act, 1965.

B. PARTLY EXEMPTED INCOME OR INCOME ENTITLED TO REBATE

Incomes forming part of the total income but exempt from or entitled to rebate of income-tax at average rate :—

7. Such incomes are :—

(1) Income in Union territories—Sec. 294A.

The Act has been made applicable to the Union territories of Goa, Daman, Diu, Dadra, Nagar Haveli & Pondicherry from the A. Y. 1963-64 This new section provides that the Central Govt. may make an exemption, reduction in rate or modification in respect of any tax in favour of any assessee on the whole or any part of the income till 31.3.1967.

(2) Share of profits from an unregistered firm—Sec. 86 (iii).

Share of profits and gains of a partner from an unregistered firm, if income-tax is payable by the U.R.F.

(3) Share of tax payable by a registered firm—Sec. 86 (iv).

The amount of tax payable by a registered firm and falling to the share of the partner according to the profit sharing ratio for the A.Y. 1968-69 only, W.e.f. the A.Y. 1969-70 the tax payable by the R.F. is deductible from its total income for the purpose of allocation amongst the partners.

(4) Share of tax paid by an A.O.P. etc.—Sec. 86(v).

Any portion of the amount which a member of the association of persons or a body of individuals is entitled to receive and on which income-tax has already been paid by the association or body.

(5) Interest on Tax-free Govt. Securities—Sec. 86A.

The Finance Act, 1965 has omitted Section 86 (i) & (ii) and inserted a new Sec. 86A. It provides exemption from income-tax at the average rate of tax subject to a maximum of $27\frac{1}{2}\%$ (Increased from 25% by the Finance Act, 1966) on the following types of incomes :—

(a) The interest due on any security of the Central Government issued or declared income-tax free.

(b) The interest due on any security of a State Government

issued income-tax free, the income-tax whereon is payable by the State Government.

N.B.—As explained in Chapter XII, several of these exemptions at average rate have w.e.f. 1968-69 been substituted by a straight deduction while computing total income

II. RELIEFS.

This section deals with the various kinds of reliefs of income-tax calculated at an average rate of income-tax, or in any other manner, as the case may be. Provisions scattered throughout the Act have been described below at one place only for the sake of convenience. It may be mentioned that the rebate on L.I.P. and P.F. contribution has been substituted by a straight deduction of a percentage of such payment in the computation of total income. Besides, several other rebates have also become entited to a straight deduction in the computation of total income from the A.Y. 1968-69 (See Ch. XII.).

A. Relief when salary etc. is paid in arrears or in advance—Sec. 89.

8. Appropriate relief can be given by the Commissioner of Income-tax if an assessee makes an applicatinn to the effect that his income is assessed at a rate higher than the rate at which he would have been assessed by reason of any portion of the salary being paid in arrears or by reason of receiving more than 12 months' pay in any one financial year or by reason of receiving payment which is profit in lieu of salary u/s 17 (3). Similary, relief is also admissible when assessee receives interest on securities in arrears.

B. Double taxation relief—Sec. 90.

9. The following are the provisions regarding double taxation relief :—

(1) The Central Government may enter into an agreement with the Government of any country for the purpose of

providing relief on doubly assessed income in India and in that country or for the purposes of avoiding double taxation of income and may make necessary rules for the purpose. The Government of India has entered into such agreements with the following countries :—Ceylon, Denmark, Federal Republic of Germany, Finland, Japan, Norway, Pakistan, Sweden and Switzerland.

(2) In the case of a country with which there is no agreement for the relief or avoidance of double taxation, the assessee who is a resident in India, and who pays tax in that country, can get deduction from the Indian tax on the doubly taxed income at the Indian rate of tax or the rate of tax of that country, whichever is lower, or at the Indian rate of tax if both the rates are equal.

(3) A deduction is allowed to Residents in respect of agricultural income-tax paid by them in Pakistan equal to the Pakistan rate or Indian rate, whichever is less.

(4) A non-resident is entitled to get deduction from the Indian tax, calculated in the manner laid down in (2) above, on the share of income from a registered firm assessed as resident in India and if such share includes any income accruing or arising outside India which has been doubly taxed.

PROBLEM No. 7.

Mr. R is a resident in India for the previous year ending 31st March, 1968 for which his total income is computed as under :—

Amount of Income		Net Tax payable in India, say (In Rs.)	Tax paid in Pakistan, say
Business Income arising in India	25,000	3,000	
Agricultural Income arising in Pakistan	5,000	600	500
Total	30,000	3,600	500

Indicate the amount of double taxation relief admissible to Mr. R on his Pakistan agricultural income.

SOLUTION.

Under section 91 (2) Mr. R is entitled to a deduction from Rs. 3,600, the Indian income-tax payable by him of Rs. 500 which is the amount of tax paid by him in Pakistan on agricultural income which is also liable to tax under the Income-tax Act, 1961, as this sum is smaller than the sum of Rs. 600 calculated on that income at the Indian rate of tax.

C. Relief respecting tax on dividends in certain cases—Sections 235 & 236.

These are of the following two types :—

10. (i) Relief to shareholders in respect of agricultural income-tax attributable to dividends—Sec. 235.

Where a company pays to a shareholder any dividend out of its profits and gains which is assessed to agricultural income-tax by State Government, the shareholder shall be entitled to a a reduction from the tax payable by him under this Act, of a sum equal to :—

(a) that proportion of the agricultural income-tax (and super-tax) paid by the company as the amount of the dividend attributable to the profits of the company assessed to agricultural income-tax bears to its total profits assessed to agricultural income-tax reduced by the amount of refund, if any, allowed to him by the State Government ;

Or,

(b) where the shareholder—

(i) is not a company, the amount of income-tax payable by him under this Act but not exceeding $27\frac{1}{2}\%$; and

(ii) is a company, $27\frac{1}{2}\%$ on that portion of the dividend which is attributable to the profits of the company assessed to agricultural income-tax ;

whichever is less.

N. B. The figure of $27\frac{1}{2}\%$ has been increased from 25% by the Finance Act, 1966.

11. (ii) Relief to a company in respect of Dividend paid out of past taxed profits—Sec. 236.

This section provides for tax credit to be given to an Indian company which distributes dividends in respect of a previous year relevant to the A. Y. 1960-61, or a later year out of profits already taxed in the A. Y. 1959-60 and earlier years. The amount of credit to be given for this purpose is a sum equal to 10% of the dividends distributed out of past taxed profits. The credit is to be given against company's liability to tax on its income for the previous year in which the dividend is paid. If the amount of tax credit is more, the excess shall be refunded.

PROBLEM No. 8.

The total income of X Co. Ltd. for the year ended 31st Dec., 1967 is composed as under :—

Agricultural income	Rs.	1,00,000
Other income	Rs.	9,00,000
Total income	Rs.	10,00,000

The company paid agricultural income-tax at the rate of 30% The subscribed and paid up capital of the company is 1,00,000 shares of Rs. 100 each. On 21. 6. 68 it distributed Rs. 4 per share as dividend. What is the relief admissible in respect of agricultural income-tax attributable to dividends in the following cases :—

(a) Mr. A holds 100 shares in X Co. Ltd. The amount of income-tax payable by him say, works out to 12% on his total income.

(b) B Co. Ltd. holds 100 shares in X Co. Ltd.

SOLUTION

(a) Under section 235 the amount of relief in respect of agricultural income-tax attributable to dividends is calculated at lower of the following two rates :—

(i) The appropriate rate of income-tax only applicable to the shareholder not exceeding 27½%, or

(ii) The rate at which the company paid agricultural income-tax (including super-tax).

Mr. A received Rs. 400 as dividends from X Co. Ltd. Rs. 40 came out of the agricultural income and the balance Rs. 360 of the other income. On Rs. 40 he will be entitled to relief at the rate of 12% which is the average rate applicable to him as it is less than the agricultural income-tax rate of 25%. The amount of relief thus comes to Rs. 4=80(40x12%) or Rs. 5.

(b) U/s 235 (b) (ii) the B Co. Ltd. will be entitled to relief at the rate of 27½% on Rs. 40 which is the sum attributable to agricultural income. Thus the relief comes to Rs. 11.

PROBLEM No. 9.

Central India Ltd. is a public limited company with a paid up capital of Rs. 1,00,00,000 divided into 1,00,000 ordinary shares of Rs. 100 each. For the previous year ended 31st March, 1967 it distributed and paid dividends in the month of August, 1967 at the rate of Rs. 10 per share. The amount for distribution of dividends was made up partly from the previous year's income and partly from preceding year's income in the following manner :—

Rs. 4,00,000 out of the taxed income of 1959-60.

Rs. 6,00,000 out of previous year's income. The amount of tax payable by it on its regular income for the previous year 31st March, 1968 was computed at Rs. 26,000. Find out the amount of relief due to the company in respect of dividend paid out of past profits and the amount of refund, if any, due to it.

SOLUTION.

Under section 236 Central India Ltd. will be entitled to a credit of 10% on Rs. 4,00,000, which comes to Rs. 40,000. That is given against tax liability of the previous year during which the dividend is paid, viz., the previous year ending 31st March, 1968. Thus the net refund due to the company for the assessment year 1968-69 is Rs. 14,000 (Rs. 40,000-26,000).

D. Relief to certain charitable institutions or funds in respect of certain dividends—Sec. 236 A.

12. A new Sec. 236A has been inserted with effect from 1-4-1964 by the Direct Taxes (Amendment) Act, 1964. This has been amended by the Finance Act, 1966 w. e. f. 1-4-66. It provides that in the case of a charitable institution or fund (exempt u/s 11 and holding atleast 75% of the share capital of a company throughout the previous year as is referred to in Sec. 104 (2) (iii)) credit should be given to it against the tax, if any, payable by it, of a sum calculated as given below, in respect of its income from dividends on ordinary shares declared or distributed, during the previous year relevant to A.Y. 1966-67 or a later assessment year, by such a company. Where the amount of credit so calculated exceeds the tax, if any, payable by the aforesaid institution or fund, the excess would be refunded. This provision became necessary in view of the new provision modifying the tax on dividend distribution by certain companies as inserted by the Finance Act, 1966.

The amount to be given as credit would be a sum which bears to the amount of income-tax rebate reduced with reference to any amount of dividends declared or distributed by such a company, the same proportion as the amount of the dividends on ordinary shares received by it from the company bears to the total amount of dividends on ordinary shares declared or distributed by the company. The amount of credit may be calculated as per formula given below :—

$$\text{Amount of credit u/s 236A} = \text{Amount of Reduction of income-tax on dividend distribution by the company.} \times \frac{\text{Dividend on ordinary shares received by the institution or fund.}}{\text{Total dividend on ordinary shares declared or distributed by the Company.}}$$

E. Export Profits Relief.

13. A relief was allowed on export profits in certain circumstances. The provisions in this connection were not contained in the Income-tax Act but in the annual Finance Act.

The Finance Act, 1967 has provided that this relief is allowed on exports upto 5-6-1966 only.

III. Tax credit Certificates—Sections 280Z to 280ZE.

14. The Finance Act, 1965 has introduced a new Chapter XXII B in the I.T. Act to provide for the grant of tax credit certificates for different purposes. The amount of T.C.C., as stated earlier is fully exempt from tax. An assessee may thus be entitled to the grant of a T.C.C., in the following events—

(a) For investment in certain equity shares (Sec. 280 Z) ;

(b) For shifting of industrial undertakings from urban area (Sec. 280 ZA) ;

(c) To certain manufacturing companies in certain cases (Sec. 280 ZB) ;

(d) For certain exports (Sec. 280ZC) ;

(e) For increased production of certain goods (Sec. 280 ZD).

The provisions of these Tax Credit Certificates in brief are discussed below.

15. (A) T. C. C. to certain equity shareholders (Sec. 280Z).

(i) It is applicable for individual & HUFs only.

(ii) It is applicable to an eligible issue of ordinary share capital by a public Co. either acquired from the Co. or an underwriter.

(iii) The rates at which the Tax Credit Certificate will be granted are as under :—

Amount paid in the financial year	Rate
(1) On the first Rs. 15,000	5%
(2) ,, next Rs. 10,000	3%
(3) ,, ,, Rs. 10,000	2%
(4) ,, ,, Balance	Nil.

(iv) It is granted for the F.Y. in which payment is first made and 3 following F. Ys. provided the shares are so held at the end of the relevant F.Y.

16. (B) TCC for shifting of industrial undertaking from urban area (Sec. 280 ZA).

(i) It is available to public limited companies only.

(ii) Shifting from notified areas to other areas in 3 years should be done with Board's approval.

(iii) Maximum amount of TCC is limited to tax on such capital gains.

(iv) TCC will be recovered if Lands etc., in the new area are transferred again within 5 years.

17. (C) TCC to certain Mfg. Cos. in certain cases (Sec. 280 ZB).

(i) It is available to Cos. engaged in manufacture of specified articles only (viz., as per I Schedule to Industries (Dev. & Regn.) Act, 1951.

(ii) TCC is equal to 20% of excess tax paid in A.Y. 1966-67 to 1970-71 over A.Y. 1965-66 (base year) or any later year when it becomes first liable to pay tax (available

only re : tax on Mfg. profits). The calculation of net tax has to be done in the manner laid down in this section.

(iii) Maximum TCC is limited to 10% of the aggregate tax for the A.Y. concerned.

(iv) TCC is to be utilised for repayment of certain institutional loans or debentures or for acquisition of any capital asset in India.

18. (D) TCC in relation to exports (Sec. 280ZC).

(i) It is available on exports after 28.2.65 & before 6.6.1966.

(ii) Sale proceeds of such exports must be received in India through recognized foreign channels.

(iii) Rate of TCC (as specified in a scheme) does not exceed 15% of the sale proceeds.

(iv) TCC can be used for discharging existing obligations. In case of excess TCC, the amount will be refunded to the assessee forthwith.

19. (E) TCC in relation to increased production of certain goods (Sec. 280 ZD).

(i) It is available to any manufacturer of goods liable to pay excise duty.

(ii) TCC=25% (maximum) of the excess of excise duty payable on goods cleared in financial years 1965-66 to 1969-70 over the F.Y. 1964-65 (base year) or any later year when it begins production.

(iii) Utilisation of TCC can be only as provided u/s 280 ZB.

(iv) TCC amount is to be adjusted against existing tax liability ; the excess is to be refunded forthwith.

Note :—For deduction re : L.I.P., etc. please see ch. XII.

The provisions regarding various exemptions and reliefs are also illustrated in the charts given below :—

CHART RE: TAX EXEMPTIONS

EXEMPTED INCOME

A. Fully Exempted income
[i.e., exempt from I. T. and not to be included in the total income.]

(i) Income of Religious & Charitable Trusts and Institutions—ss. 11-13
(ii) Other income—sec. 10 :—
1. Agricultural income
2. Receipts from HUF
3. Casual income
4-5 Certain incomes of a non-resident
6. Value of travel concession
7. Certain incomes of non-citizens
8. Allowances for foreign service
9. Re : Co-operative technical assistance programmes
10. Income of the member of the family of an individual referred to in 9.
11. Death-cum-retirement gratuity
12. Payments from a statutory P.F.
13. Accumulated balance of Recognised P.F.
14. Payment from Super-annuation Fund
15. Special allowance or benefit
16. House rent allowance
17. Certain types of interest payments
18. Scholarships
19. Daily allowance of M. P.s etc.
20. Gallantry awards
21. Privy purse
22. Certain income of a local authority
23. Income of an approved scientific research association.
24. Any income of an University etc.
25. Income of sport institutions
26. Income of a Trade Union
27. Income of statutory and Recognised P. Fs.
28. Income of Scheduled Tribes
29. Income from livestock farming etc.
30. Tax Credit Certificates etc.
31. Income of Stautory marketing authority etc.

Partially Exempted Income
[i. e., exempted from I.T., but to be included in the total income.]

From I.T. at average rate

1. Income in Union territories—s. 294A.
2. On share from a U.R.F. paying I.T.—s. 86.
3. On share of tax payable by an R.F.—s. 86.
4. On share from an A.O.P. paying I.T.—s. 86
5. Interest on Tax free Govt. Securities—s. 86A

CHART RE : TAX RELIEFS & TAX CREDIT CERTIFICATES

A. Reliefs

1. On arrear or advance salary etc.—s. 89
2. On Double taxation—s. 90
3. In respect of agricultural I. T. on dividends—sec. 235
4. In respect of dividend paid out of past taxed profits (companies only)—sec. 236
5. To certain charitable institutions or funds in respect of certain dividends —sec. 236. A
6. On export profits (under the earlier Finance Act).

B. Tax Credit Certificates

1. Tcc to certain equity shareholders (s. 280 Z)
2. Tcc for shifting of industrial undertakings from urban area (s. 280 ZA)
3. Tcc to Certain Mfg. Cos. in certain cases (s. 280 ZB)
4. Tcc in relation to exports (s. 280 ZC)
5. Tcc in relation to increased production of certain goods (s. 280 ZD).

PROBLEM No. 10.

Mr. X is receiving a monthly salary of Rs. 5,000 from A. Co. Ltd. You are required to compute the total income of Mr. X after taking into account his income from other sources which is as under :—

(i)	Income from Unit Trust of India	Rs. 1,500
(ii)	Interest from P.O.S.B. a/c	Rs. 600
(iii)	Agricultural Income	Rs. 3,000
(iv)	Dividends received from an Agricultural Co.	Rs. 1,500

SOLUTION.

Computation of total income of Mr. X for the F. Y. 1967-68 relevant to the A.Y. 1968-69.

I.	Basic-Salary @ Rs. 5,000 p.m.	Rs. 60,000
II.	Income from Unit Trust of India Rs. 1,500 Less : *Exempt* Rs. 1,000	Rs. 500
III.	Interest from P.O.S.B. a/c—*Exempt*	—
VI.	Agricultural Income—*Exempt*	—
V.	Dividends from Agricultural Co.	Rs. 1,500
	Total Income	Rs. 62,000

PROBLEM No 11.

Please state whether the receipt in the following cases can be described to be "casual" and "non-recurring."—

(1) A coal company received Rs. 20,000 as commission for negotiating the sale of a textile mill.

(2) A company holding a decree received Rs. 1 lac as interest under an order of court granting stay of execution of the decree on the judgement debtor furnishing security for a specified amount and paying interest at a certain rate.

(3) A company realised a sum of Rs. 50,000 on the sate of silver coins which had ceased to be legal tender and which were not held as business assets.

(4) A company recovered Rs. 40,000 in excess towards cess from a lessee (in respect of a mining lease) in addition to rent and royalty.

SOLUTION.

(1) The receipt is taxable on the ground that it is an adventure, although isolated, in the nature of the business of acting as brokers and also on the ground that it is not of a casual and non-recurring nature.

(2) Such a receipt is taxable and cannot be regarded either as casual or non-recurring.

(3) The receipt is exempt as being casual receipt.

(4) The receipt of Rs. 40,000 is not accidental or casual. It is taxable.

PROBLEM No. 12.

In the following cases please state whether the income is agricultural income :—

(1) A company earns Rs. 15,000 as commission for selling the agricultural produce of its tenants.

(2) A company is usufructuary mortgagee of a certain agricultural land. It receives Rs. 40,000 as rent for the agricultural land from the tenants. 70% of the rent received by the company is to be appropriated by it towards the payment of interest and 30% towards the payment of the principal by the mortgagor.

SOLUTION.

(1) Commission for selling the agricultural preduce of its tenants does not become agricultural income merely by reason of indirect connection with agricultural land.

(2) The rent for agricultural land received by the mortgagee company is agricultural income. The fact that a part of the rent is to be apportioned between the mortgagor and the mortgagee to the payment of principal and interest is immaterial.

Questions.

Q. 1. Enumerate the kinds of income which are totally exempt from income-tax and are not to be included in total income.

Ans. See paras 3 & 4.

Q. 2. What are the provisions governing the exemption of income of religious and charitable institutions ?

Ans. See para 3.

Q. 3. Enumerate the incomes which form part of total income but are themselves exempt from income-tax and/or entitled to rebate of income-tax at average rate.

Ans. See para 7.

Q. 4. Write short notes on the following :—
(a) Relief when salary is paid in advance or arrears. (b) Relief to shareholders in respect of agricultural income-tax attributable to dividends. (c) Double taxation relief. (d) Rebate to a company on dividends paid out of past taxed profits. (e) Tax credit certificates.

Ans. See (a) para 8. (b) para 10 (i). (c) para 5. (d) para 11 (ii). (e) paras 14 to 19.

PART II

COMPUTATION OF TOTAL INCOME

CHAPTER V

SALARIES [Sections 15 to 17]

1. Having studied the preliminary information regarding the various units of assessment, heads of income, exemptions etc., we are now in a position to study in detail the computation of total income under the various heads. First of all we start with 'Salaries".

2. Important points regarding Salaries.

(a) The tax is payable by an assessee under the head "Salaries" in respect of any salary or wages, any annuities, pension or gratuity and any fees, commissions perquisites or profits in lieu of, or in addition to any salary or wages etc.

(b) Tax is levied on salaries which are *due whether paid or not* as well as on salaries which are *paid whether due or not* e.g., advance of salary etc., and on arrears of salary paid or allowed to him.

(c) *The relationship of employer and employee* must exist between the payer and the recipient of salaries. The employer may be Government, a local authority, a company or any other public body or association or any other private employer.

(d) *A lump-sum received in commutation or substitution* of salary or pension rights is now exempt in the manner described in Ch. IV, para 4(12).

(e) *Death-cum-retirement gratuities* and certain payments from provident funds are completely exempt from tax as stated in Chapter IV, para 4, (Items No. 13 etc).

(f) The income chargeable under the head 'salaries' is to be computed after making certain deductions therefrom which are given below.

(g) Provisions regarding different types of provident funds and the payment of life insurance premia are very important and are to be carefully studied to find out the correct income-tax on income chargeable under the head 'salaries'.

(h) Salaries, are subject to deduction of tax at source. Hence income-tax is to be paid on salaries for a particular assessment year at the rates applicable to the previous financial year. For details re : deduction of tax from salaries, please see Chapter XXI.

(i) For different meanings of "salary" please see the chart at the end of this chapter.

3. Meanning of the term 'Perquisite'—Sec. 17(2).

Certain perquisites are taxable as salary. The term 'Perquisite' is defined in the Oxford English Dictionary as "any casual emolument, fee or profit attached to an office or position, in addition to salary or wages". Perquisites and profits may take a variety of forms, e.g., extra payment, voluntary or stipulated lump-sum bonus, allowance paid for the maintenance and education of the employees' children or to meet the extra cost of living in a foreign country, etc.

Under sec. 17(2) "perquisite" includes certain items, in addition to what that word means under the general law and whether they are convertible into money or not. They are :

A. Value of Rent Free Accomodation.

(i) The *value of rent-free accommodation* or the value of any concession in the matter of rent respecting any accommodation provided to the assessee by his employer. As per Rule 3 of the I.T. Rules 1962 it is taken as equal to 10% of salary (Please see P. 71 for its definition) in case of unfurnished accommodation and 12½% in case of furnished accommodation so long as the fair rent of the accommodation does not exceed 20% (unfurnished) of the employee's salary.

Where the fair rent of the house is in excess of the said 20% or 25% of the salary, the value of the perquisite is to be taken as 10% or 12½% of the salary, *plus* the excess of the fair rent over 20% or 25% of the salary as the case may be. Rule 3 of the Income-tax Rules now gives a discretion to the I.T.O., to add only a part and not the whole of the excess of the fair rental value over 20% or 25% of the employee's salary, having in view the nature of accommodation concerned.

For example as per the Executive Instructions, in respect of any rent—free accommodation provided in the cities of Bombay, Calcutta, Delhi and Madras, only the excess over 37·5% of salary is to be added to the 12½% in respect of furnished accommodation and the excess over 30% of salary is to be added to the 10% in respect of unfurnished accommodation. In respect of accommodation in the tea gardens, the value of the perquisite as per the executive instructions, is to be determined at 7·5% of salary in respect of unfurnished accommodation and at 9% of salary for furnished accommodation, subject to the maximum sums Rs. 7,500 and Rs. 9,000 p.a. respectively.

The value of residential accommodation provided at a *concessional rent* is determined as the sum by which the value computed in accordance with the provisions as stated above as if the accommodation were provided free of rent, exceeds the rent actully payable by the assessee for the period of his occupation during the relevent previous year.

For the *above purpose* (i.e., value of rent-free accommodation) the definition of the following terms should carefully be noted :—

(A) The *fair rental value* shall be,—

(i) Where the accommodation is provided by Government to an Officer under its administrative control, the rent which has been or would have been determined as payable to Government by the officer in accordance with the rules framed by Government for allotment of residence for its Officers.

(ii) In any other case—

Where the accommodation *is not furnished*, the rent which a similar accommodation would realise in the same locality or the municipal valuation in respect of the accommodation, which is higher ; and

Where the accommodation *is furnished*, the fair rental value of the accommodation as if it were not furnished, plus the fair rent for the furniture (including air-conditioning equipments and refrigerators), calculated at 10 per cent. per annum on the original cost of the furniture, or if the furniture is hired from a third party, the actual hire charges payable therefor ;

(B) "*Salary*" includes the pay, allowance, bonus or commission payable monthly or otherwise, but does not include the following, namely ;—

(i) Dearness allowance or dearness pay unless it enters into the computation of superannuation or retirement benefits of the employee concerned ;

(ii) Employer's contribution to the provident fund account of the assessee ;

(iii) Allowances which are exempted from payment of tax.

N. B.—Please note that the above definition of "Salary is only for finding out the value of rent-free or concessional accommodation.

PROBLEM No. 13.

The following are the particulars of salary of an executive officer of a coal company in Dhanbad for the financial year, 1968-69 :—

		Rs.
(i)	Basic pay	2,000 p.m.
(ii)	Dearness allowance	200 p.m.
(iii)	Bonus	2,000 p.a.
(iv)	Entertainment allowance (since 1.4.53)	200 p.m.
(v)	Commission	4,000 p.a.
(vi)	Employer's contribution to the recognised provident fund equal to 10% of basic pay	200 p.m.

(vii) Rent-free residential accommodation-rent payable by the company is 700 p.m.

(viii) Free use of Ambassador car both for office and personal use

Calculate the value of the perquisite in the form of rent-free residential accommodation if the same is (i) furnished ; (ii) unfurnished.

SOLUTION.

The value of the rent-free residential accommodation will be determined under r. 3 of the I. T. Rules, 1962. First, the "Salary" for this purpose will have to be determined. The amount of such salary as per definition on Page 71 is computed as under :—

	Rs.
Basic salary @ Rs. 2,000 p.m.	24,000
Bonus	2,000
Commission	4,000
Salary	30,000

The value of the rent-free residential accommodation has to be expressed as a percentage of the above salary and not the amount taxable under the head "Salaries", as is made clear by Explanation (2) to r. 3. The aforesaid value is computed as under :—

(i) If the accommodation is furnished :		Rs.
First $12\frac{1}{2}\%$ of Salary [$12\frac{1}{2}\% \times 30,000$]		3,750
Next, excess of fair rent over 25% of salary :		
Fair rent @ Rs. 700 p.m.	8,400	
Less : 25% of Rs. 30,000	7,500	900
Value of the perquisite		4,650
(ii) If the accommodation is unfurnished :		
First 10% of salary [$10\% \times 30,000$]		3,000

Next, excess of fair rent over 20% of salary :		
Fair rent @ Rs. 700 p.m.	8,400	
Less : 20% of Rs. 30,000	6,000	2,400
Value of the perquisite		5,400

Note :—Due to lacuna in the Rules, such an absurd result is possible. The Rules have to be amended.

PROBLEM No. 14.

An employee at Ajmer is in receipt of Rs. 40,000 p.a. as salary. He has been allotted fully furnished flat by the company for which the company deducts Rs. 400 p.m. from his salary. The company pays a rent of Rs. 1,000 p.m. for this flat direct to the landlord. Calculate the value of this perquisite for the purpose of inclusion under the head "Salaries".

SOLUTION.

Calculation of the value of the perquisite in the form of residential accommodation at a concessional rent as per r. 3 (b) :

		Rs.
First $12\frac{1}{2}\%$ of the salary [$12\frac{1}{2}\% \times 40,000$]		5,000
Next, excess of fair rent over 25% of salary :		
Fair rent @ Rs. 1,000 p.m.	= 12,000	
Less : 25% of salary	10,000	2,000
		7,000
Less : Rent paid by the employee to the company		4,800
Value of the residential accommodation at concessional rent		2,200

Note :—It would be incorrect to take the value of the perquisite in such a case as the difference between the actual rent and rent paid by the employee, viz., Rs. 1,000-Rs. 400=Rs. 600 p.m. or to consider this figure of Rs. 600 p.m. as the fair rental value and then to limit the value of the perquisite to $12\frac{1}{2}\%$ of the salary.

PROBLEM No. 15.

An employee who is getting Rs. 1,000 p.m. is provided with an unfurnished flat whose monthly rent payable by the company is Rs. 300. The company deducts Rs. 200 p.m. from the salary of the employee. Compute the value of the perquisite in this case.

SOLUTION.

	Rs.
First 10% of salary [10% × 12,000]	1,200
Next, excess of fair rent over 20% of salary :	
Fair rent @ Rs. 300 p.m.=3,600	
Less : 20% of salary=2,400	1,200
	2,400
Less : Rent paid by the employee to company	2,400
Value of the perquisite	Nil

PROBLEM No. 16.

The company has provided one of its own furnished flat to one employee free of rent. The annual salary of the employee is Rs. 1,20,000. Compute the value of the perquisite.

SOLUTION.

Value of the perquisite in the form of rent-free residential accommodation=$12\frac{1}{2}$% of salary of Rs. 1,20,000=15,000

PROBLEM No. 17.

A general manager of a public limited company at Calcutta is in receipt of a salary of Rs. 5,000 p.m. He is provided with fully-furnished bungalow owned by the company. The municipal valuation of the bungalow is Rs. 12,000 p.a. The original cost of the furniture, airconditioners and refrigerators in the house is Rs. 80,000. Determine the value of the perquisite.

SOLUTION.

The fair rental value of the bungalow will be determined as per Expln. 1 to r. 3 as stated below :

	Rs.
Municipal valuation of the bungalow	12,000
Add : 10% of the original cost of the furniture [10% of Rs. 80,000]	8,000
Fair rental value	20,000

The value of the rent-free bungalow is determined as under :—

First 12½% of salary [12½% × 60,000]		7,500
Next, excess of fair rental value over 37½% of salary :		
Fair rental value=	20,000	
Less : 37½% of salary of Rs. 60,000=	22,500	—
Value of the perquisite		7,500

B. Value of Benefits to director etc.

(ii) The value of *any benefit or amenity* granted or provided by a *company* free of cost or at concessional rate to an employee who is a *director* thereof or who is substantially interested in the company.

C. Value of other Perquisities :

(iii) The value of any *benefit or amenity* granted or provided to an assessee (where cl. (2) in not applicable) by his employer free of cost or at concessional rate in any case where the income of the assessee under the head "Salaries" exclusive of value of all benefits or amenities not provided for by way of monetary payment *exceeds Rs. 18,000.*

(I) Valuation of perquisite in the form of use of motor car etc.

Rule 3 (c) of the I.T. Rules, 1967 contains the following provisions in this regard :—

(1) The value of a motor car provided by the employer for use by the assessee exclusively for his private or personal purpose shall be determined as the sum actually expended by

the employer in the maintenance and running of the motor car during the relevant previous year (including the normal wear and tear where the motor car is owned by the employer).

(2) The value of the motor car provided for the use of the assessee partly for his personal purposes and partly for business purposes shall be determined to be that part of the sum out of the amount actually expended by the employer in the maintenance and running of the motor car during the relevant previous year (including the normal wear and tear where the motor car is owned by the employer which can reasonably be attributed to the user by the assessee for his private or personal purposes, but where a determination on the basis mentioned above presents difficulty, the value of the perquisite may be determined on the basis provided hereunder :

Value of perquisite per calendar month

	Where the h.p. rating of the car does not exceed 16 or the cubic capacity of the engine does not exceed 1·88 litres.	Where the h.p. rating of the car exceeds 16 or the cubic capacity of the engine exceeds 1·88 litres
	Rs.	Rs.
1. Where the motor car is owned or hired by the employer and all the expenses of maintenance and running are met or reimbursed to the assessee by the employer.	150	250
2. Where the motor car is owned or hired by the employer but the expenses of maintenance and running for the private and personal purposes are met by the assessee out of his pocket.	60	100

(3) Where the assessee owns the motor car but the actual running or maintenance charges are met or reimbursed to him, by the employer the value of the perquisite to the assessee shall be determined as the sum actually epended by the employer which in the opinion of the Income-tax Officer can reasonably be attributed to the user of the car by the assessee for his private or personal purposes.

(4) The value of the free use by the assessee of any other type of conveyance provided by the employer shall be determined as the sum actually expended by the employer in the maintenance and running of the conveyance during the relevant previous year (including normal wear and tear, where the conveyance is owned by the employer) which in the opinion of the Income-tax Officer can reasonably be attributed to the user by the assessee for his private or personal purposes.

(II) Valuation of perquisites other than motor car :

Rule 3 (d) (e) (f) and (g) contains provisions for the valuation of other kinds of perquisites.
They are :—

(1) The value of the benefit to the assessee resulting from the supply of gas, electric energy or water for his household consumption free of any charge, shall be determined as the sum equal to the amount paid on that account by the employer to the agency supplying the gas, electric energy or water, but—

(a) Where such supply is made from resources owned by the employer without purchasing them from any other outside agency, the value therefor shall be taken as nil ; and

(b) Where the Income-tax Officer is satisfied that the gas, electric energy, or water supply to any assessee are consumed also for the purposes of his official duties, the Income-tax Officer shall determine the value of the benefit to the assessee to be equal to the amount paid on that

account by the employer to the agency supplying the gas, electric energy or water or 6¼ per cent. of the salary of assessee, whichever is lower.

(2) The value of the benefit to the assessee resulting from the provision of free education facilities to any member of his household shall be determined as the sum equal to the amount of the expenditure incurred by the employer in that behalf, but where the educational institution itself is maintained and run by the employer for the benefit of all his employees as a group, the value of the perquisite to the assessee shall be determined with reference to the reasonable cost of such education in a similar institution in or near the locality.

(3) The value of any benefit or amenity resulting from the provision by any undertaking engaged in the carriage of passengers or goods to any employee of the undertaking or to member of his family or his dependent relatives, of journey free of cost or at concessional fares, in any conveyance owned by the undertaking for the purpose of transport of passengers or goods shall be taken as nil.

(4) The value of any benefit or amenity included in the preceding clauses of this rule shall be determined on such basis and in such manner as the Income-tax Officer considers fair and reasonable.

D. Other sums :

(iv) Any sum paid by the employer in respect of any *obligation* which but for such payment would have been payable by the assessee.

(v) Any *sum payable by the employer*, whether directly or through a fund (not being a recognised or approved super-annuation fund) to effect an assurance on the life of the assessee or in respect of a contract for an annuity on the life of an assessee.

4. Profits in lieu of salary—Sec. 17 (3).

For the purpose of this head, this expression includes :—

(i) The amount of any *compensation* due to or received by an assessee from his employer or former employer at or in connection with the termination or the modification of the terms of his employment, whether solely as compensation for loss of employment or for any other consideration.

(ii) Any payment (other than the payments specifically exempted u/ss. 10 (10), (10 A), (11), (12) or (13A) due to or received by an assessee from an employer or former employer from a provident or other fund, to the extent to which it does not consist of contribution by the assessee or interest on such contribution. This clause refers to unrecognised provident funds explained later on in this chapter.

5. Deductions from "Salaries"—Sec. 16.

The following deductions are allowed from salaries :—

(i) Any amount *not exceeding Rs. 500* expended by the assessee on the purchase of books and other publications necessary for the purpose of his duties.

(ii) *Entertainment allowance* equal to $\frac{1}{5}$th of his salary (exclusive of any special allowance, benefit or other perquisites) or Rs. 5,000 in the case of a Government Servant or Rs. 7,500 in the case of any other assessee, whichever is less, provided in the *latter case* the employee was in receipt of such an allowance before 1-4-55.

(iii) Any tax on professions, trades, callings, employments etc., levied by a State Government.

(iv) In respect of *any conveyance owned by the assessee* and used by him for the purposes of his employment, such sum as the I. T. O. may estimate in respect of such use as representing the expenditure incurred by the assessee for its maintenance and as representing its normal wear and tear.

In order to simplify the computation of salary income, the Finance Act, 1968, has provided for standard deductions, comprising the allowances for maintenance expenditure and also wear and tear of various categories of conveyance, which can also be taken into account in calculating the tax to be deducted at source from salary income of a taxpayer owning the conveyance and using it for the purpose of his employment. These deductions have been made effective from the assessment year 1969-70 and hence can be taken into account in calculating the tax deducted at source from salary income during the financial year 1968-69. The amounts of these standard deductions which, in the case of motor cars, very according to the range of salary income of the employee, are as follows :

Category of conveyance.	Amount of the Standard deduction for every month or part of the month during which the conveyance has been used for the purpose of employment.
	Rs.
(1) **Motor Cars :**	
(a) Where the amount of the gross salary income during the year does not exceed Rs. 15,000	150
(b) Where the gross salary income is between Rs. 15,001 and Rs. 25,000	200
(c) Where the gross salary income exceeds Rs. 25,000	250
(2) Motor Cycles, Scooters or other Mopeds	50
(3) Bicycles	5

(v) Any amount actually expended by the assessee which he, by the conditions of his service, is required to spend out of his remuneration wholly, necessarily and exclusively in the performance of his duties.

PROBLEM No. 18.

'A' is the manager of 'X' Works Ltd. on a monthly salary of Rs. 2,000, a commission of 5% on the net profits and a motor car allowance of Rs. 100 p. m. He is also provided with a free unfurnished house. The net profits of the business for the year were Rs. 1,00,000. As an ex-employee of a former princely State he is also getting a pension of Rs. 250 p. m. Compute the income from salary for the A. Y. 1968-69.

SOLUTION.

Computation of income from salary for A. Y. 1968-69.	Rs.
Salary for 12 Months @ Rs. 2,000 p. m. ...	24,000
Pension -do- ,, Rs. 250 p. m. ...	3,000
Car allowance* ... ,, Rs. 100 p. m. ...	—
Commission ... ,, 5% on Rs. 1,00,000	5,000
Value of rent-free house ,, 10% of Rs. 29,000=(Rs. 24,000+Rs. 5,000)	
...	2,900
Income from salary	34,900

[* It is assumed that the motor car allowance is spent for official duties.]

PROBLEM No. 19.

From the following particulars of income of Mr. X for the assessment year 1968-69 (Previous year=Financial year 1967-68) compute the income under the head 'Salaries' :—

Basic salary—Rs. 1,000 p. m. (Salary for the months of Jan, Feb. & March of 1967 not actually drawn by him).

Bonus equal two months' salary received.

One month's salary received by him in advance in January, 1967 was returned in Oct., 1967. This amount was included in the Assessment for the year 1967-68. He paid Rs. 50 as Professional tax. He spent Rs. 200 on technical books.

SOLUTION

Computation of income from "Salaries" for the A. Y. 1968-69

		Rs.
Basic salary for 9 months at Rs. 1,000 p. m. on receipt basis		9,000
Basic salary for 3 months (Jan., 68 to March, 68) at Rs. 1,000 p. m. on "Due basis" or "Accrual basis"		3,000
Two months' salary received as bouns		2,000
	Gross Salary	14,000
Less :		
(1) Advance salary for one month i. e., Jan., '67 already taxed in A.Y. 1967-68 and returned in Oct., 67	1,000	
(2) Professional tax	50	
(3) Expenditure on books	200	1,250
	Taxable salaries	12,750

PROBLEM No. 20.

Mr. Basu, a renowned structural engineer, has furnished particulars of his income for the year ended 31st March, 1968 and other relevant information for computing his total income as under :—

(1) That he received a salary of Rs. 3,500 p. m. or Rs. 42,000 and a fixed entertainment allowance of Rs. 7,200 during the year ended 31st March, 1968 from M/s. Structural Engineers, Ltd., Bombay, with whom he was employed as an engineer with effect from 1st April, 1967. He incurred an expenditure of Rs. 6,000 during the year on entertainment.

(2) Prior to joining M/s. Structural Engineers Ltd., Bombay, he was employed by M/s. Pioneer Builders Ltd. According to his contract of service with that company, the service with them was to continue for 3 years from 1st October, 1965 on a salary of Rs. 3,000 p.m. But due to some disagreement with the management, his services were terminated with effect from 31st March, 1967 before the expiry of his term of service and he was paid Rs. 18,000 on the 4th April, 1967 as compensation for loss of employment.

(3) He paid Life Insurance Premium amounting to Rs. 16,000 on his own life.

Compute the income of Mr. Basu under the head "Salaries" for the assessment year 1968-69 giving reasons for your action.

SOLUTION.

Computation of income of Mr. Basu under the head "Salaries" for the Assessment year 1968-69.

Salaries u/s 15 :	Rs.
(i) Salary received from M/s. Structural Engineers Ltd., Bombay, at Rs. 3,500 p.m.	42,000
(ii) Perquisites : Entertainment allowance received during the year ; it is not deductible as he was not in receipt thereof from his present employer before 1-4-55.	7,200
(iii) Profits in lieu of salary, being the compensation for loss of employment, received from the former employers, M/s. Pioneer Builders Ltd., during the previous year, (The assessee is, however, entitled to relief u/s 89)	18,000
Income from Salaries	67,200

Deduction for L.I.P. on a sum of Rs. 15,000 (Maximum) will be allowed in respect of income-tax as explained in Ch. XII.

6. House Rent Allowance [Sec. 10(13A)].

The new Rule 2A of the Income Tax Rules, 1962 now provides that the maximum amount to be exempted under the head "HOUSE RENT ALLOWANCE" would be the minimum of the following four sums :—

(a) The actual amont of house rent allowance ;

(b) The excess of the actual house rent over 10% of the salary ;

(c) (i) 20% of the salary if the residential accommodation is situate in Ahmmedabad, Bangalore, Bombay, Calcutta, Delhi, Hyderabad, Kanpur, Poona, and Madras. (ii) 10% of the salary in other places ;

(d) Rs. 300/- per month.

The term "salary" for this purpose includes dearness pay (if it enters into the calculation of retirement benefits) but excludes all other allowances and perquisites. It is the same sum which is taken for the purpose of calculating the Provident Fund contribution by the empoyee, if any.

PROBLEM No. 21.

Mr. X is employed in Calcutta. He is getting a basic salary of Rs. 1,000/- per month and an entertainment allowance of Rs. 200/- per month. He is getting house rent allowance of Rs. 250/- per month. Actual rent paid by him is Rs. 360/- per month. Find out the amount of house rent allowance exempted from tax for the A.Y. 1968-69.

SOLUTION.

The amount of house rent allowance of Mr. X as exempted from tax would be calculated as under :—

The least or the minimum amount of the following four sums, viz.,

(a) Rs. 250/- i.e., the actual amount of house rent allowance.

(b) Rs. 260/- i.e., the excess of house rent (of Rs. 360/-) over 10% of salary (i.e., Rs. 100/-)

(c) Rs. 200/-i.e., 20% of the salary.

(d) Rs. 300/- i.e., the maximum exempted house rent allowance.

Thus the exempted house rent allowance in the case of the above employee would be Rs. 200/- per month for the financial year 1968-69.

PROBLEM No. 22.

Mr. Z is working at Ajmer and he is getting Rs. 2,000/- per month as salary. He is provided with a free conveyance by the employer. He is getting house rent allowance of Rs. 500/- per month. The actual rent paid by him is Rs. 600/- per month. Find out the amount of house rent allowance exempted from tax for the A. Y. 1968-69.

SOLUTION.

The amount of house rent allowance of Mr. Z to be excluded from taxable income would be as under :—

The least or the minimum of the following four sums, viz.,

(a) Rs. 500/- i.e., the actual amount of house rent allowance.

(b) Rs. 400/- i.e., the excess of actual house rent of Rs. 600/- over 10% of salary (i.e., Rs. 200/-per month).

(c) Rs. 200/- i.e., 10% of the salary (as the place is Ajmer).

(d) Rs. 300/- i.e., the maximum exempted house rent allowance.

Thus in this case also, the maximum exempted house rent allowance for Mr. Z would be Rs. 200/- per month i.e., the least of the above four sums as per the said Rule 2A.

7. Provident Funds.

Generally speaking, provident funds, of which an employee may be a member are of three kinds :—

A. Statutory Provident Funds.

B. Recognised Provident Funds.

C. Unrecognised Provident Funds.

Old as well as new provisions regarding rebate or deduction in respect of contributions to provident funds are described below. They are also discussed in Ch. XII dealing with computation of total income.

8. Statutory Provident Funds.

(a) *Definition* :—

These provident funds are so-called because they are governed by a statute (i.e., an Act) known as the Provident Funds Act, 1925. Examples of such provident funds are those maintained by the government, railways, local authorities, universities and certain companies and colleges.

(b) *What sums are to be included in salary ?*

(i) Only the employees' contributions are included in the salary for income-tax purposes. (ii) Employer's contributions and interest on Provident Fund are not to be included at all.

(c) *Rebate or deduction allowed—*

Upto the A. Y. 1965-66 Employee's own contributions to such a fund together with any life insurance premium etc., paid by him are exempt from income-tax and super-tax upto 1/4th *of his total income* or Rs. 10,000, whichever is less.

The Finance Act, 1965 has abolished the system of granting rebate as aforesaid w.e.f., A. Y. 1966-67 and has provided for a straight deduction equal to 60% of the first Rs. 5,000 of such qualifying amount and 50% of the balance. The maximum, eligible sum is 30% of gross total income or Rs. 15,000, whichever is less.

9. Recognised Provident Funds.

(a) *Definition :—*

This is a provident fund which conforms to the conditions laid down in Part A of the IV Schedule of the Act and which has been recognised by the Commissioner of Income-tax, on an application made to that effect by the trustees to the fund.

(b) *What sums are to be included in salary* :—

In finding out income under the head "salaries", the following sums are to be included in it :—

(i) Employee's own contributions to such a fund : (ii) Employer's contribution in excess of 10% of the regular salary of the employee ; (iii) interest on the accumulated balance of the fund in excess of $\frac{1}{3}$rd of the salary or 6% rate of interest, and (iv) Accumulated balance in the P. F. (as per para 4) in certain cases only as given in Rules 8 and 9 of Part A of IV Schedule to the Act, viz., where he has not rendered continuous service with his employer for a period of five years and in case of shorter period of continuous service, the service has not been terminated by reason of the employee's ill-health, or by the contraction or discontinuance of the employment.

(c) *Rebate or deduction allowed* (*ss. 87 & 80 C*) :—

A. Upto the A. Y. 1965-66 :—

(i) Employee's contributions to such fund are exempt from income-tax and super-tax upto *1/5th of his salary* or Rs. 8,000, whichever is less.

(ii) Employee's own contributions taken together with insurance premium etc., paid by him for insuring his own life or the life of his wife are exempt from income-tax and super-tax upto *1/4th of total income* or Rs. 10,000, whichever is less.

B. From the A. Y. 1966-67 onwards :—

The Finance Act, 1965 has, w. e. f. the A. Y. 1966-67 abolished the system of granting rebate as aforesaid and has provided for a straight deduction equal to 60% of the first Rs. 5,000 of employee's contribution to P. F. together with L. I. P. and 50% of the balance. This is subject to a maximum of $\frac{1}{5}$ of his salary or Rs. 8,000, whichever is less (for P.F. contribution only) and 30% of gross total income or Rs. 15,000 whichever is less (for P. F. contribution and L.I.P.

etc.). The latter limits have been so increased from 25% and Rs. 12,500 respectively w. e. f. A. Y. 1968-69.

10. Unrecognised Provident Funds

(a) *Meaning* :—

These are the funds which do not fulfil certain conditions prescribed by the law for recognised provident funds. The name is 'Unrecognised' because they are not recognised by the Commissioner of Income-tax.

(b) *What sums are to be included in salary* :—

(i) Only the contribution made by the employee are to be included in the salary.

(ii) Employer's contribution to such a provident fund and interest on the accumulated balance of the fund are not to be included in salary income from year to year.

(iii) Sums received on account of accumulated balance of provident fund of the employee are taxable so far as they represent employer's contributions and interest thereon.

11. Life insurance premia—Sections 87 & 80C.

(a) Upto the A.Y. 1965-66 the premium paid for insuring the life of an assessee or the life of his wife or her husband or in the case of an H.U.F. on the life of any male member or his wife is exempt both from Income-tax and super-tax (i.e., entitled to a rebate of I. T. & S. T. average rate of tax) in the case of an Individual to the extent of $\frac{1}{4}$th of his total income or Rs. 10,000, whichever is less, and in the case of an H. U. F. $\frac{1}{4}$ of its total income or Rs. 20,000, whichever is less. The Finance Act, 1965 has inserted new section 80A (now new s. 80C) to provide for a straight deduction on account of L.I. P to be granted while computing the total income itself @ 60% of the first Rs. 5,000 and 50% of the balance. This is now subject to a maximum of 30% of the gross total income (i.e., without deducting the L. I. P. etc.) or Rs. 15,000 and in the case of an H. U. F., Rs. 30,000, whichever is less (The same

have been increased from 25% and Rs. 12,500 for individuals & Rs. 25,000 for H. U. Fs. from the A.Y. 1968-69.

Note :—In the case of salaried assessees this system is applicable from the A. Y. 1966-67 while in the case of non-salary assessees it is applicable w. e. f. the A. Y. 1965-66.

(b) The annual premium paid should not exceed 10% of the sum assured.

(c) No relief is admissible on premium paid out of income which is not chargeable to Indian Income-tax. For other details please see Chap. XII.

PROBLEM No. 23.

The following are the particulars of A's income for the previous year ended 31st March, 1968 :—

1. Salary—Rs. 1,000 p.m.
2. Bonus—Rs. 1,500 p. a.
3. A rent-free house (whose annual value is Rs. 1,000).
4. Contribution to a Provident Fund by the employee —10% of his salary.
5. Employer's contributions to the provident fund—15% of the salary.
6. Interest credited to the provident fund at 8% p. a. —Rs. 800.
7. Life insurance premium paid on A's life is Rs. 5,000 on a policy of Rs. 46,000.
8. Income from other sources—Rs. 1,500.

Find out A's taxable liability for the A. Y. 1968-69 if the provident fund in question is (i) a statutory provident fund (ii) a recognised provident fund, or, (iii) an unrecognised provident fund. He has opted not to pay annuity deposit.

SOLUTION.

A's taxable liability for the A. Y. 1968-69 (In Rs.)

Particulars of income	(i) Statutory P.F.	(ii) Recognised P.F.	(iii) Unrecognised P.F.
Salary for 12 months @ 1,000 p.m.	12,000	12,000	12,000
Bonus for the year...	1,500	1,500	1,500
Rent-free house (it should not exceed 10% of the salary)...	1,000	1,000	1,000
Employer's contributions to P.F. (in excess of 10%)	—	600	—
Interest on P.F. (in excess of 6%	—	200	—
	14,500	15,300	14,500
Add: Income from other sources...	1,500	1,500	1,500
Gross income...	16,000	16,800	16,000
Income entitled to deduction :			
1. Contribution to P. F. by the employee	1,200	1,200	—
2. Life Insurance premium (L.I. Premia should not exceed 10% of the sum assured)	3,600	3,840	4,600
Total...	4,800	5,040	4,600
Deduct : 60% of Rs. 5,000			
50% of balance	2,880	3,020	2,760
Total Income	13,120	13,780	13,240

N. B.—Provident fund contribution and insurance premia for the A. Y. 1968-69 should not exceed 30% of the total income or Rs. 15,000, whichever is less.

DIFFERENT MEANINGS OF "SALARY" FOR DIFFERENT PURPOSES

SALARY

for

A. Total income under the head salaries s. 15 & 17(1)	B. Rent free residential accommodation s. 17(2)(i)	C. House Rent Allowance s. 10(13A)	D. Deduction of Provident fund Contribution s. 80C	E. Deduction of Entertainment Allowance s. 16(iv)	F. For application of the upper limit of Rs Rs. 18,000. s. 17(3)(iii)
1. Basic salary 2. Advance of salary 3. Arrears of salary 4. Annuity or pension 5. Gratuity 6. Fees, Commission, bonus 7. Dearness allowance 8. Profits in lieu of salary 9. Excess contribution to the R.P.F. by employer (over 10% of the salary) 10. Excess interest received fro R.P F. (Over 6% p.a.) 11. Taxable Transferred balance to R.P.F. 12. Perquisites.	1. Pay 2. Allowances 3. Bonus 4. Commission (Excluding dearness allowance or pay not entering into retirement benefits, employer's contribution to R.P.F., exempted allowance & perquisites) r-3 of I.T. Rules 1962.	1. Basic salary 2. Dearness Allowance or Pay-Relevant for retirement benefits (excluding all types of allowances, bonus or other forms of perquisites).	1. Same as in C. for House Rent allowance	1. Same as in C. for House Rent allowance + 9 & 10 of A.	All regular monetary payments, viz., 1. Pay 2. Dearness allowance 3. Other allowances 4. Bonus 5. Commission etc.

Questions.

Q. 1. What relief from income-tax is allowed in respect of life insurance premia and provident fund contributions and interest thereon, and how is the amount of such relief calculated ?

Ans. See paras 6 to 10 and Problem No. 23 & Ch. XII.

Q. 2. What are the various deductions allowable from salaries ?

Ans. See Para 5.

Q. 3. Write short notes on :—

(a) Perquisites.
(b) Profits in lieu of salary.
(c) Recognised Provident funds.

Ans. (a) See Para 3.
(b) See Para 4.
(c) See Para 8.

Q. 4. Shri Subhash is the secretary of M/s Current Tax Bulletin, Calcutta. The following are the particulars about his income for the previous year ended 31-3-68 :—

(a) Salary Rs. 500 p.m.

(b) His contribution to a recognised provident fund is $6\frac{1}{4}\%$ of his salary.

(c) His employer's contribution is 9% of his salary.

(d) Interest on the accumulated balance in the P. F. is Rs. 200.

(e) Two months' salary as bonus.

(f) Servant allowance Rs. 100 p.m.

(g) He paid Rs. 500 premium on his life insurance policy.

You are required to find out his (i) Total income from salary and (ii) Income entitled to deduction.

Ans. (i) Rs. 8,200. (ii) Rs. $875 \times 60\% = 525$ or Rs. 530.

Q. 5. The following are the particulars about the income of Mr. Suresh, a government servant posted in Bombay for the previous year ended 31-3-68 :—

(a) His salary was Rs. 1,000 p.m. and his travelling allowance bills for the whole year amounted to Rs. 2,000, the actual expenditure incurred by him on travelling being Rs. 1,500.

(b) He contributed $6\frac{1}{4}\%$ of his salary to government provident fund and his employer contributed an equal amount. Interest on his provident fund account balance for the year amounted to Rs. 780. He is insured and pays an annual premium of Rs. 3,200.

(c) He received 15% of his salary as house-rent allowance throughout the year. The actual house-rent paid by is Rs. 260 p.m. Compute the income from salary and the amount entitled to deduction.

Ans. Salary Income Rs. 12,500 ; Eligible amount for deduction Rs. 3,750 ; (=Rs. 750 for P.F. contribution, and Rs. 3,000 for L.I.P.), i.e., 30% of gross total income ; Amount entitled to deduction=Rs. 3,750×60%=Rs. 2,250 [H.R.A. of 15% is fully exempt u/s 10 (13A)]

CHAPTER VI

INTEREST ON SECURITIES [Sections 18 to 21]

I. Important points regarding Interest on Securities.

In the computation of income from interest on securities the following points should carefully be noted :—

(a) Under this head of income, tax is payable by an assessee in respect of the interest receivable by him on (*i*) *Central and State Government securities excluding annuity deposit and (ii) debentures or other securities for money of companies, statutory corporations and local authorities only*. No other types of securities come under this head of income.

(b) Interest on securities is taxable on 'Due' basis whether a person actually receives it or not. However, if any person receives any such interest which has not been taxed earlier, it will be taxed on "Receipt basis."

(c) As interest on securities is usually due on certain periodical dates the income therefrom is taxed in the hands of the person who is the owner of the securities on that date.

(d) Cum-int. and ex-int. transactions are to be completely ignored in finding out the actual amount of interest on securities except in the case of bond washing transactions u/s 94.

(e) In the case of *tax-free government securities, the* net amount of interest is included in the total income but is exempt from income-tax u/s 86A at an average rate subject to a maximum of $27\frac{1}{2}\%$. This has been so provided by an amendment by the Finance Act, 1966. No such relief is

available for any other type of tax-free commercial or other securities—Sec. 86A.

(f) Any profit or loss resulting from a sale of securities is a revenue profit or loss for an assessee who carries on the business of buying and selling securities, otherwise it is a capital profit or loss for an assessee who holds them as an investment.

(g) Interest on securities is subject to deduction of tax at source. Therefore, the net amount received as interest is to be grossed up by adding the tax deducted to the amount of interest actually received. The gross amount of interest after some allowable deductions is taxable as interest on securities.

2. Deductions allowed from interest on securities—Sec. 19.

The following deductions are permissible in computing the taxable income from interest on securities :—

(a) Reasonable amount of *collection charges* paid to any banker or any other person for the realisation of such interest. No such charges are admissible for buying and selling securities.

(b) *Interest payable in India on moneys borrowed* by the the assessee for the purpose of investment in the securities. Where the loan is taken for purchasing tax-free securities the interest on such loan should be deducted from the tax-free interest. Thus only the net amount is to be shown for claiming exemption from income-tax.

PROBLEM No. 24.

Compute the income from 'Interest on securities' in the case of Mr. X for the A. Y. 1968-69 from the following facts :—

(a) Investments as on. 1. 4. 1967 :—

3% Govt. Conversion Loan	of Rs.	10,000
$4\frac{1}{2}$% U. P. Govt. Loan	of Rs.	20,000
5% Municipal Debentures	of Rs.	80,000

(b) Interest in each case falls due on 1st Feb., and 1st Aug., every year.

(c) Interest actually received by Mr. X during the financial year 1967-68 is (i) Rs. 900 from 3% Govt. Conversion Loan for the three financial years 1965-66, 1966-67 and 1967-68 ; and (ii) Rs. 2,000 from Municipal Debentures.

SOLUTION.

Computation of income from 'Interest on Securities' for the Assessment Year 1968-69

	Rs.
Interest from 3% Govt. Conversion Loan of Rs. 10,000 on 'Receipt basis' for F. Y. 1967-68 only (as the interest for F. Y. 1965-66 and 1966-67 must have already been assessed on 'Due basis')	300
Interest at 4½% U. P. Govt. Loan of Rs. 20,000 on 'Due basis' for the entire year	900
Interest at 5% on Municipal Debentures of Rs. 80,000	
(a) for six months on 'Receipt basis'	2,000
(b) for six months on 'Accrual basis'	2,000
Total	Rs. 5,200

PROBLEM No. 25.

A's investments for the previous year ended 31-3-68 were :—

(1) Rs. 10,000 3%tax-free Government securities.

(2) Rs. 20,000 4% Municipal Debentures.

(3) Rs. 30,000 5% Debentures of a Jute Mill Co.

(4) Rs. 40,000 6% Preference shares in a company.

The bank charged Rs. 200 as commission for collecting interest. He paid Rs. 1,000 as interest on loan taken for the purpose of buying company's debentures. Interest is payable n each case on 1st January and 1st July.

Find out the taxable income and exempted income under the head 'interest on securities' for the Assessment year 1968-69.

SOLUTION.

A's assessment for the assessment year 1968-69.

Particulars of Income.			Amount-Rs.
Tax-free Government Securities :—			
Interest at 3% on	Rs. 10,000	...	300
Taxed Securities :			
Interest at 4% on	Rs. 20,000	Municipal Debentures ...	800
-do- at 5% -do-		30,000 Debentures of a Jute Mill Co.	1,500
			2,600
Less :—Bank Commission for collecting interest		Rs. 200*	
Interest on loan for debentures		Rs. 1,000	1,200
Interest on Securities			1,400
Exempted Income :			
Interest from tax-free Govt. Securities...			300

*Note :—As no specific amount of collection charge is mentioned against interest from tax-free Govt. securities, the full amount has been deducted here.

Questions.

Q. 1. What are the deductions permissible by the Income-tax Act from interest on securities.

Ans. See page 2.

Q. 2. The following are the investments of Mr. X for the previous year ended 31-3-68. You are requested to calculate his income from securities for the assessment year 1968-69.

Investments on 1-4-67 :—

(i) Rs. 60,000 4% 1961-70 U. P. Govt., Loan ; (ii) Rs. 30,000 5% Calcutta Improvement Trust Debentures ; (iii) Rs. 15,000 6% Preference shares of a Cotton Mill company ; (iv) Rs. 20,000 5% free of tax Government loan ; and (v) Rs. 40,000 6% Debentures of a Co.

On 1-9-67, he sold the above Rs. 40,000 6% Debentures of a Co. and purchased Rs. 70,000 6½% Debentures of the E. B. Jute Co., Ltd. The additional sum of Rs. 30,000 needed for the purpose was borrowed from the bank at 7½% p.a. interest. The banker charged $\frac{1}{16}$% commission on selling & buying of the investment and ¼% on collection of interest and dividend. Interest or dividend on investment is payable in each case half yearly on 31st July and 31st January each year.

Ans. Income from securities Rs. 7,040 ; Exempted Income Rs. 1,000.

Note :—The income has been rounded off to the nearest multiple of Rs. 10/- u/s 288A, inserted by the Finance Act, 1966.

CHAPTER VII

INCOME FROM HOUSE PROPERTY

[Sections 22 to 27]

1. Important points regarding income from house property.

In the computation of income from house property the following points should carefully be borne in mind :—

(a) Under this head, tax payable by an assessee on the *annual value* of property consisting of *building and lands attached thereto* of which he is the owner.

(b) If the property is occupied by the assessee for the purposes *of his own business or profession* and the profits of such business etc., are assessable to tax, the annual value of such property is not taxable at all.

(c) Property may either be (i) let-out, or (ii) occupied by the assessee himself either wholly or in part. He is to pay tax on the annual value of the property in both the cases but the method of computing income from property in both the cases is different.

(d) Certain deductions are allowed from annual value in order to arrive at the taxable income from property. If the deductions are in excess of the annual value, the resultant figure is a loss from property which can be set-off against income under other heads.

(e) Where property is owned by two or more persons and their respective shares are definite and ascertainable, such persons shall not in respect of such property be assessed as an association of persons, but the share of each such person in the income from the property as computed in accordance with these sections shall be included in his total income—Sec. 26.

2. **Annual Value—Sec. 23.**

(a) Income-tax under this head is chargeable not in respect of any actual rent received but in respect of the annual value of the property which means *the sum for which the property might reasonably be expected to let from year to year.* The actual rent received, the municipal value of the property the rent paid for similar properties in the locality etc., are the factors which help in determining the annual value of the property.

(b) Where the property is *let out* and is subject to local taxes [including service taxes], then one-half of such taxes are to be deducted from the annual letting value of the property in order to arrive at the annual value of the portion of the property so let out.

However, in case of properties completed before 1-4-1950 **full** taxes (levied by any local authority) as against $\frac{1}{2}$ only in the case of any other property are to be deducted.

Note—With effect from the A.Y. 1969-70, full local taxes in respect of a property will be deducted irrespective of the fact that it has been constructed before or after 1-4-50.

(c) In respect of a building the erection of which is begun and completed after 1-4-1961 *and* which is let on rent to tenants, the annual value of the residential unit shall be reduced by the amount of its annual value or Rs. 600, whichever is less, for a period of *three years* from the completion of the building, so however, that the income in respect of any residential unit shall in no case be a loss.

(d) Where the property is in the *occupation of the owner for purposes of his residence*, the annual value thereof is first determined in the same manner as if the property had been let to a tenant. The amount so determined is then reduced by $\frac{1}{2}$ of it or Rs. 1,800, whichever is less. However, the Finance (No. 2) Act, 1967 has provided that the sum so reduced should not, in any case, exceed 10% of the other gross total income of the assessee

without adding the income from the property used for residence.

(e) Where the property referred to in (d) above, consists of *one residential house only* and it cannot actually be occupied by the owner by reason of the fact that owing to employment, business, profession or vocation carried on at any other place, he has to reside at that place in a building not belonging to him and the residential house is not actually let and no other benefit therefrom is derived by the owner the income of such property shall be taken to be *nil*. If it was occupied for a part of the previous year, then income shall be computed proportionately. Thus, if there are more than one residential properties and if one of them cannot be so occupied this concession will not be available in respect of such unoccupied property. It may also be noted here that the deduction u/s. 24 in respect of such property cannot exceed the annual value.

3. Deductions from Annual Value—Sec. 24.

For the purposes of computing the income from property, the following deductions are allowed from the Annual Value thereof :—

(1) $\frac{1}{6}$th of the annual value for *repairs* irrespective of whether anything has been spent on repairs or not. In a case where the tenant has undertaken to bear the cost of repairs, the excess of annual value over the rent, subject to the maximum amount of $\frac{1}{6}$th of A. V. shall be allowed.

(2) *Annual premia paid to insure* the property against risk of damage or destruction.

(3) *Interest on mortgage* or on any other capital charge, irrespective of the object for which the money is borrowed. (This Clause has been omitted from the A.Y. 1969-70).

(4) The amount of *annual charge of a revenue nature* on the property. (From A.Y. 1969-70 this deduction will be available only if the charge has not voluntarily been created by the assessee).

(5) *Ground rent.*

(6) *Interest on borrowed capital* for the purposes of acquiring, constructing, renewing, repairing or reconstructing.

(7) *Land revenue* (*From the A. Y. 1969-70 any other tax levied by the state Govt. will also be deducted*).

(8) *Collection charges* (including legal expenses incurred in recovering rent from tenants) upto 6% of the Annual Value.

(9) *Vacancy Allowance* for the period the house remains vacant.

(10) Bonafide sums on account of *unrealised rents.*

PROBLEM No. 26.

Rent payable by a tenant is Rs. 6,000 p.m. The total amount of local taxes payable in respect of the property is Rs. 2,000 of which Rs. 600 is paid by the tenant direct to the local authority in addition to the rent. Calculate the annual value for the A. Y. 1968-69.

SOLUTION.

Calculation of Annual Value for the A. Y. 1968-69 :—

		Rs.
Rent payable by a tenant	... ...	6,000
Add : taxes paid by him direct to the local authority	... ...	600
		6,600
Less : $\frac{1}{2}$ local taxes	... ...	1,000
	Annual Value—	5,600

Note :—It is assumed that the house was constructed after 1-4-1950.

PROBLEM No. 27.

X is the owner of one house, which is occupied by him for his own residence. The municipal valuation of the house is Rs. 3,000 p.a. The expenses of the house are :—

Repairs : Rs. 700 : F. I. premium : Rs. 200 ;

Int. on mortgage taken for his son's marriage : Rs. 600.

Ascertain his income from property, assuming that his income from other sources during the previous year ending 31st March, 1968 was Rs. 12,000.

SOLUTION.

Mr. X's income from Property for A. Y. 1968-1969 :—

		Rs.
Annual Value of the house occupied [Not to exceed 10% of the other Gross Total income]= 10% × 12,000	...	1,200
Less :		
1. $\frac{1}{6}$th for repairs	200	
2. F. I. premium	200	
3. Int. on mortgage	600	
		1,000
Income from property	...	200

PROBLEM No. 28.

A is owner of two houses : one, whose municipal valuation is Rs. 1,000 is occupied by him for his own residence and the other, whose municipal valuation is Rs. 1,600 is let out at Rs. 200 P. M. The expenses for both the houses are—

Municipal taxes Rs. 260 p. m., land revenue for the house let out Rs. 100, interest on loan taken to repair the house let Rs. 300, fire insurance premium for both the houses Rs. 200.

Ascertain his income from property, assuming that this property was constructed in May, 1949 and that his income from other sources during the previous year 1967-68 was Rs. 15,000.

SOLUTION.

Mr. A's Assessment for the assessment year 1968-69 (In Rs.)

Annual letting value of house let out :	2,400	
Less : Full municipal taxes (160 in respect of the house according to the municipal valuation of the houses). ...	160	
Annual value of property let...		2,240
Rental value of the house occupied (on the basis of the rental value of the house let out) i.e., $\frac{1,000 \times 2,400}{1,600}$	1,500	
Less : Full Local taxes ...	100	
	1,400	
Less : Statutory Allowance ($\frac{1}{3} \times 1,400$)	700	
Annual value of property occupied		700
(not to exceed 10% of other gross total income)		
Annual value of both the houses...		2,940
Deductions : 1/6th for repairs ...	490	
Land revenue ...	100	
Int. on capital borrowed	300	
Fire insurance premium	200	1,090
Income from Property ...		1,850

PROBLEM No. 29.

Shri Gupta owns two houses : one whose municipal valuation is Rs. 2,500 is occupied by him for his residence and the other, whose municipal valuation is Rs. 3,000 is let out at Rs. 200 p. m. The expenses for the houses are :

	1st house	2nd house
Municipal taxes ...	250	300
Land revenue ...	100	125
Int. on loan to reconstruct the house ...	200	100
F. I. premium	150	200
Int. on mortgage ...	—	175
Collection charges ...	—	45

Assuming that the second house remained vacant for three months and that his income from other sources during the previous year 1967-68 was Rs. 6,000, ascertain his income from property.

SOLUTION.

Income from property of Sri Gupta for the A. Y. 1968-69

			Rs.	Rs.
A. Property let out :—				
Annual rental value		...	3,000	
Less : $\frac{1}{2}$ local taxes [It is assumed that the property was constructed after 1-4-1950]		...	150	
Annual Value		...	2,850	
Less :	Rs.			
$\frac{1}{6}$th for repairs	...475			
Land revenue	...125			
Interest on loan	...100			
F. I. P.	...200			
Interest on mortgage	...175			
Collection charges [Limited to 6% of the Annual value or actual charges, whichever is less]	...45			
Vacancy Allowance for 3 months [$\frac{1}{4}$th of A. Value]	...712		1,832	1,018
B. Property occupied for self-residence :				
Annual Value (not to exceed 10% of other gross total income) 10% × (1,018+6,000) = 10% × 7,018				
Annual Value	...	...702		
Less : $\frac{1}{6}$th repairs	... 117			
Land Revenue	... 100			
Int. on loan	... 200			
F. I. Premium	150	567		135
			Income from Property ...	1,153
			or, say Rs.	1,150

PROBLEM No. 30.

Gopal is employed in a factory on a monthly salary of Rs. 500. He is the owner of a big house whose municipal valuation is Rs. 1,600 per annum. He has let out 1/3rd portion of his house on a monthly rent of Rs. 60 and the remaining 2/3rd is occupied by his family. He has taken a loan of Rs. 5,000 on mortgage of the house used for residence @ 6% p. a. for educating his son. The house is subject to a local tax of Rs. 300 per annum. His income from other sources during the previous year was Rs. 1,400. Find out Gopal's total income for the A. Y. 1968-69.

SOLUTION.

Gopal's Total Income for the A. Y. 1968-69.

				Rs.	Rs.
1.	Salaries @ Rs. 500 p. m. for 12 months.				6,000
2.	Income from property :		Rs.		
	A. Let : Annual Letting Value @ Rs. 60 p. m.	...	720		
	Less : $\frac{1}{2}$ local taxes (100 for $\frac{1}{3}$ of house)	...	50		
			670		
	,, $\frac{1}{6}$th for repairs	...	112	558	
	B. Occupied : (Annual Value not to exceed 10% of the other gross total income) :				
	Annual Value = 10% × (6000 + 1400 + 558)				
	10% × 7,958			796	
	Less : $\frac{1}{6}$th for repairs		133		
	Int. on mortgage @ 6% on Rs. 5,000 (The purpose of the mortgage is immaterial upto the A. Y. 1968-69)		300	433	
				363	
	Income from property			921	921
3.	Income from other sources	...			1,400
					8,321
			or u/s 288 A	Rs.	8,320

Note :—It is assumed that the house was constructed after 1-4-50.

Questions.

Q. 1. State the provisions of sections 22 to 27 of the Income-tax Act regarding tax on "income from property."

Ans. See para 1 to 3.

Q. 2. Write a short note on "Annual Value of property".

Ans. See para 2.

Q. 3. What are the deductions allowed in computing income from property.

Ans. See para 3.

Q. 4. Find out the total income for A. Y. 1968-69 from the following facts :—

(a) Mr. X is the owner of two houses built in 1948, the municipal valuation being Rs. 4,000 and Rs. 5,000 respectively. Municipal taxes on both of them are Rs. 900.

(b) The first is occupied by him for his own residential purposes ; the second is let out at Rs. 500 p.m.

(c) His income from other sources is Rs. 10,000.

Ans. Rs. 15,798 or Rs. 15,800 (A. V. of first house being Rs. 1,458 being 10% of Rs. 14,583).

Q. 5. Find out the income from house property from the following facts in the case of Sri A for the A. Y. 1968-69 :—

(i) He is owner of three properties built in 1960 with municipal valuation as Rs. 2,000, Rs. 3,000 and Rs. 4,000 respectively. Local taxes for all the three properties are Rs. 900. (ii) The first house at Delhi is let out at Rs. 200 p.m. The second house is occupied by his family at Ahmedabad for residential purpose. The third house at Bombay was locked throughout the year, and he claims exemption on the ground that this house could not be occupied due to his service at Ajmer. (iii) His income from other sources is Rs. 5,000.

Ans. Rs. 2,494 or Rs. 2,490 (A. V. of houses occupied being Rs. 692 i.e., 10% of Rs. 6,917 (Rs. 5,000+1,917).

CHAPTER VII

PROFITS AND GAINS OF BUSINESS OR PROFESSION—[Sections 28 to 44]

1. This head of income is the most important of all because it attracts the greatest amount of tax. Under this head tax is to be paid by an assessee on the *profits and gains* of a business, or profession (including vocation) carried on by him. The net profits (i.e., gross incomings minus certain expenses) disclosed by an assessee are quite different from the taxable profits and gains to be ascertained in accordance with Income-tax Act. While all the expenses claimed by an assessee in his profit and loss account are not deductible, all the income shown by him is also not taxable under this head. Therefore, it is very important for us to know and remember the expenses expressly allowed and disallowed by the law in computing taxable profits and gains from business, profession or vocation.

2. Profits and gains of business or profession—Sec. 28.

'Business' includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture. 'Profession' includes Vocation also. The following income is chargeable to income-tax under the head "Profits and gains of business or profession :—

(i) The profits and gains of any business or profession which was carried on by the assessee at any time during the previous year (It includes the profits and gains of managing agency also) ;

(ii) Any compensation or other payment due to or received by—

(a) any person by whatever names called, managing the whole or substantially the whole of the affairs of an Indian company, at or in connection with termination of the management or the modification of the terms and conditions relating thereto ;

(b) any person, by whatever name called, managing the whole or substantially the whole of the affairs in India of any other company, at or in connection with the termination of his office or the modification of the terms and conditions relating thereto ;

(c) any person, by whatever name called, holding an agency in India for any part of the activities relating to the business of any other person at or in connection with the termination of the agency or the modification of the terms and conditions relating thereto ;

(iii) Income derived by a trade, professional or similar association from specific services performed for its members.

(iv) The value of any benefit or perquisite whether convertible into money or not arising from business or the exercise of a profession.

3. Deductions expressly allowed.

The income referred to in the above para has to be computed after making the following deductions which are expressly allowed by the Act :—

(I) Rent, rates taxes, repairs and insurance for building—Section 30.

In respect of rent, rates, taxes, repairs and insurance for premises used for the purpose of business or profession the following deductions are allowed :

(a) Where the premises are occupied by the assessee—

(i) as a tenant, the rent paid for such premises ; and further if he has undertaken to bear the cost of repairs to the premises, the amount paid on account of such repairs ;

(ii) otherwise than as a tenant, the amount paid by him on account of current repairs to the premises ;

(b) any sums paid on account of land revenue, local rates or municipal taxes ;

(c) the amount of any premium paid in respect of insurance against risk of damage or destruction of the premises.

(2) Repairs and insurance of machinery, plant and furniture—Sec. 31.

In respect of repairs and insurance of machinery, plant or furniture used for the purpose of the business or profession, the following deductions are to be allowed :—

(i) the amount paid on account of current repairs thereto ;

(ii) the amount of any premium paid in respect of insurance against risk or damage or destruction thereof.

(3) Depreciation, development rebate and development allowance—For details please see separate para 8.

(4) Rehabilitation allowance—Sec. 33B.

The Finance (No. 2) Act, 1967 has with effect from the A.Y. 1967-68 provided that where the business of an industrial undertaking in India which manufactures or produces articles which is discontinued because of extensive damage to or destruction of its buildings, machinery, plant or furniture as a direct result of natural calamities (like flood, typhoon, hurricane, cyclone, earthquake, etc.,) riot or civil disturbance, accidental fire or explosion or enemy action, whether with or without declaration of war, is re-established, re-constructed or revived by the assessee within a period of three years from the end of the year in which it was discontinued, he will be entitled to a deduction, by way of "rehabilitation allowance", in the computation of his profits of the year in which the business is so re-established etc. The 'rehabilitation allowance' will be granted in a sum equal to 60% of the balancing allowance" or "terminal allowance" admissible to an assessee

u/s. 32 (1) (iii) (see para. 8) in respect of the damaged or destroyed capital asset.

(5) Expenditure on Scientific Research—Sec. 35.

In respect of expenditure on scientific research, the following deductions are allowed :—

(i) Any expenditure (not being in the nature of capital expenditure) laid out or expended on scientific research related to the business.

(ii) Any sum paid to an approved scientific research association which has as its object the undertaking of scientific research or to a university, college or other institution to be used for scientific research.

(iii) Any sum paid to an approved university, college or other institution to be used for research in social science or statistical research related to the class of business carried on.

(iv) $\frac{1}{5}$th of the capital expenditure incurred upto 31.3.67 on scientific research related to the class of business carried on by the assessee in any previous year, the balance being deductible in equal instalments for each of the four immediately succeeding previous years. Any such capital expenditure incurred after 31.3.67 will be allowed to be deducted *in full in one year* only, as per the amendment inserted by the Finance (No. 2) Act, 1967.

(6) Expenditure on acquisition of patent rights or copyrights—Sec. 35A.

The Finance Act, 1966 has inserted a new sec. 35A in the I.T. Act. It provides that any capital expenditure incurred by an assessee after 28-2-1966, on the acquisition of patent rights or copyrights (hereinafter referred to as rights) used for the purposes of the business will be allowed as a deduction in equal instalments over a period of 14 years (or years as reduced by the number of complete years comprised in the period which has expired since the commencement of the

said rights and before their acquisition by the assessee, whichever of the two periods is shorter). Where the full period of 14 years had expired before such acquisition, the entire cost of acquisition will be allowed in one instalment. Where, before the end of any of the relevant previous years for which the allowance is to be made, the rights come to an end without being subsequently revived or where the assessee sells the whole or any part of the rights for an amount which is not less than the capital cost remaining unallowed, no allowance will be allowed in respect of the previous year in which the rights come to an end or, as the case may be, are sold.

Where the rights come to an end without being subsequently revived and are sold in their entirety and the proceeds of sale are less than the cost of acquisition thereof remaining unallowed, then the cost so remaining unallowed or, as the case may be, such cost as reduced by the sale proceeds will be allowed as deduction in full in the previous year in which the rights come to an end or, as the case may be, are sold. Where the rights or any part thereof are sold and the capital sum received on the sale exceeds the cost of the rights remaining unallowed, the excess, to the extent of the amount already allowed, will be charged as the assessee's profits of the previous year in which the rights are sold. Where a part only of the rights is sold for an amount less than the capital cost remaining unallowed, the amount to be allowed now will be recomputed by reducing the capital cost remaining unallowed by the sale proceeds. The balance will be allowed in equal instalments for the relevant previous year and the subsequent previous years. These provisions are modified in the case of amalgamation of un-economic company unit with other Indian company.

(7) **Export markets development allowance—new Sec. 35B.**

The Finance Act, 1968 has inserted a new sec. 35B in the I. T. Act to provide w. e. f. the A. Y. 1968-69 that domestic companies and also non-corporate resident taxpayers who incur

any expenditure after 29.2.68 (under certain specified heads) to facilitate or promote the sale, outside India, of any goods, services or facilities dealt in or provided by them in the course of their business will be allowed a weighted amount of deduction in respect of such expenditure. This deduction will be in a sum equal $1\frac{1}{3}$ times ($=133\frac{1}{3}\%$) the amount of qualifying expenditure.

(8) **Agricultural Development Allowance.—new. Sec. 35C.**

The Finance Act, 1968 has inserted a new sec. 35C in the I. T. Act to provide tax incentive with a view to encouraging companies using the products of agriculture, animal husbandry or dairy or poultry farming, to provide agricultural inputs and extension services to persons engaged in agriculture etc. Companies which use the products of agriculture, etc. as raw material for their industry or process such products, will be eligible for a weighted deduction in the computation of their business profits with reference to expenditure incurred by them after 29.2.1968 in providing any goods services or facilites under specified heads to a cultivator, grower or producer of the products of agriculture, etc. The deduction will be equal to $1\frac{1}{3}$ times (120%) the amount of the qualifying expenditure.

(9) **Other deductions—Sec. 36.**

The following further deductions are admissible in computing the income referred to in section 28 earlier :—

(i) The amount of any *premium* paid in respect of insurance against risk of damage or destruction of stocks or stores used for the purposes of business or profession.

(ii) Any sum paid to an employee as *bonus or commission* for services rendered, provided the sum is reasonable having reference to the pay of the employee and the conditions of his service, the profits of the business or profession for the previous year in question, and the general practice in similar business or profession.

(iii) The amount of the *interest* paid in respect of capital borrowed for the purposes of business or profession.

(iv) *Contribution* by an employer to a recognised provident fund or an approved superannuation fund.

(v) Contribution by an employer to an *approved gratuity fund* created by him for the exclusive benefit of his employees under an irrevocable trust,

(vi) The difference between the actual cost and the sale price of *dead or useless animals* used for the purposes of the business or profession.

(vii) The amount of *bad debt*, subject to the following rules :—

(a) No deduction in respect of a bad debt is admissible unless it has been taken into account in computing the income of the assessee of that previous year or of an earlier previous year, or represents money lent in the ordinary course of the business of banking or money-lending which is carried on by the assessee, and which has been written off as irrecoverable in the accounts of assessee for that previous year.

(b) If the amount ultimately recovered on any such debt is less than the debt and the bad debt so deducted, the deficiency shall be deductible in the previous year in which the ultimate recovery is made.

(c) If the debt is written off in an earlier accounting year and the I.T.O. has not allowed it in that year as having been prematurely written off, the I.T.O. is empowered to allow it in any subsequent year when he is satisfied about its irrecoverability.

(d) And, conversely, if the bad debt is written off in the account of the previous year corresponding to the current assessment year but the I.T.O. finds that it had become a bad debt in an earlier previous year, the I.T.O. is empowered to re-open the assessment of the earlier previous year provided the year, the assessment of which is to be re-opened does not fall beyond a period of 4 years immediately preceding the year in which the debt is written off. One

important condition for the I.T.O. for doing so is that the assessee should accept the finding of the I.T.O. in this regard.

PROBLEM No. 31.

In the following cases (Calendar year being the Accounting year) indicate the assessment year in which and the amount for which the assessee can get the deduction for bad debt :—

(a) A sum of Rs. 10,000 was written off as bad on 25-11-66 in the books of account of an assessee. A claim for deduction in respect of this bad debt was made before the I.T.O. for the A.Y. 1967-68. The I.T.O., vide his assessment order dated 28.6.67 allowed Rs. 4,000 only and disallowed the balance by stating that Rs. 3,200 were prematurely written off and stated that it became bad in the month of May, 1967 only, that the balance of Rs. 2,800 had become bad in August, 1963.

(b) A sum of Rs. 5,000 was written off as bad in the books of account of an assessee on 25.9.1966. As against the claim for Rs. 5,000 as bad debt, the I.T.O. for A.Y. 1967-68 gave a finding that only Rs. 1,500 had become bad during the year 1966 and allowed the sum of Rs. 1,500 only. Later, the assessee realised Rs. 2,700 in full and final settlement of the debt on 28-3-1967.

SOLUTION.

(a) The assessment for A.Y. 1964-65 shall be revised u/s 155 and the assessee shall be allowed Rs. 2,800 as bad debt for that year. Rs. 3,200 shall be allowed as bad debt in the A.Y. 1968-69 as according to the I.T.O. this sum became bad in the month of May, 1967 only.

(b) The assessee shall be entitled to a further deduction in respect of Rs. 800 (Rs. 3,500-2,700) in the A.Y. 1968-69 as the final amount was realised on 28.3.1967 which falls in the previous year 1967, relevant to the A.Y. 1968-69.

(viii) *Any special reserve* created by an approved financial corporation which is engaged in providing long term finance for industrial development in India, not exceeding 10% of

the total income (without deducting any amount under Ch. VIA of the I.T. Act) till the amount carried to the reserve equals (and does not exceed) the paid up capital of the corporation.

The Finance Act, 1966 has amended this provision to the effect that in the case of such a corporation whose paid-up share capital does not exceed Rs. 3 crores, the said limit will be increased from 10% to 25% from the A.Y. 1966-67 onwards.

(ix) Any expenditure bonafide incurred by a company for the purpose of promoting *family planning* amongst its employees. Where such expenditure is of a capital nature, $\frac{1}{5}$th thereof will be deducted in the previous year in which it was incurred and in each of the four immediately succeeding previous years. This has been inserted by the Finance Act, 1965.

(10) General deductions—Sec. 37.

(a) Any expenditure, not coming under the previous clauses, and not being in the nature of capital expenditure or personal expenses of the assessee, laid out or expended wholly and exclusively for the business or profession is allowed in computing income from business or profession.

(b) In the case of a company, *entertainment expenditure* in excess of the following limits is not allowed :—

(i) On the first Rs 10 lakhs of the profits and gains of the business (computed before making any allowance u/ss. 33 and 33A i. e., for development rebate or allowance or in respect of entertainment expenditure)...at the rate of 1% or Rs. 5,000, whichever is higher.

(ii) On the next Rs. 40 lakhs (,, ,,) @ $\frac{1}{2}$%
(iii) ,, Rs. 120 lakhs (,, ,,) ,, $\frac{1}{4}$%
(iv) On the balance (,, ,,) NIL

(c) Any expenditure incurred by any assessee after 31.3.65 on advertisements or on maintenance of any residential accommodation (including guest house) or in connection with

travelling by any employee or any other person shall be allowed only to the extent as is prescribed by the rules.

(11) Special provision for deductions in the case of business for prospecting etc. for mineral oil—Sec. 42.

For the purpose of computing the profits and gains of any business consisting of the prospecting for or extraction or production of mineral oils in relation to which the Central Government has entered into an agreement with any person or the association or participation in such business of the Central Government, the following allowances as are specified in the agreement, are to be allowed :—

(a) Expenditure by way of infructuous or abortive exploration expenses in respect of any area surrendered prior to the beginning of commercial production by the assessee ;

(b) after the beginning of commercial production, expenditure in respect of drilling or exploration activities etc. ; and

(c) the depletion of mineral oil in the mining area in respect of the assessment year relevent to the previous year in which commercial production is begun and for such succeeding year or years as may be specified in the agreement.

(12) Relief in respect of additional rupee cost due to devaluation of Indian rupee—Sec. 43A.

The Finance (No. 2) Act, 1967 has introduced a new Sec. 43A for providing relief to assessees in respect of the additional rupee cost incurred by them due to devaluation of the rupee on capital assets imported by them from abroad, before the date of devaluation, on deferred payment terms or against foreign loans. The original actual cost of the machinery or plant and other capital assets eligible for depreciation will be allowed to be written-up in the previous year in which the date of devaluation, viz., 6th June 1966 falls, by the additional rupee cost incurred in respect of such assets due to devaluation, and depreciation, but not development rebate, will be granted with reference to the cost so written-up.

The original cost of a capital asset used by an assessee for scientific research related to his business, as well as of capital assets used by a corporate assessee for promoting family planning amongst its employees, and on patent rights and copyrights will also be allowed to be written up similarly by such additional rupee cost, and amortised against the profits over a period, as per the existing provisions.

Where a capital asset acquired by an assessee from abroad before the date of devaluation is sold or otherwise transferred by him after the date of devaluation, the capital gains or loss, as the case may be, in respect of such asset will be computed with reference to the original cost of the asset so written up by the additional rupee cost, if any.

(13) Special provision for deduction in the case of trade or professional or similar association—Sec. 44A.

This is a provision inserted by the Finance Act, 1964. It provides that in the case of a trade, professional or similar association [other than referred to in sec. 10. (23A) as described in Ch. IV para 4 (27)] which does not distribute any part of its income to its members, the amount of any deficit (excess of expenditure incurred in the advancement of common interest of the members of the association concerned over receipts from the members) will be allowed to be deducted from the assessable income of the association to the extent of 50% of such income.

4. Expenses expressly disallowed.

The following are the various types of expenses that are expressly inadmissible in computing the profits and gains of business or profession :—

(1) Capital expenditure—Sec. 37(1).

(2) Personal expenses or drawings of the assessee—Sec. 37(1).

(3) Any expenditure not laid out or expended wholly and exclusively for the purposes of the business or profession—Sec. 37(1).

(4) Entertainment expenditure in the case of a company in excess of the maximum amount permissible as stated in the previous para—Sec. 37(2).

(5) Any expenditure incurred by an assessee in any accounting year commencing after 10.8.1966 on advertisement or on maintenance of any residential accommodation (including a guest house) or in connection with travelling by an employee or any other person (including hotel expenses or allowance paid in connection with such travelling) in excess of the limits prescribed by the Rules 6A to 6D of I.T. Rules as inserted by I.T. (Second Amendment) Rules, 1966.

(6) Where a building etc. is partly used for business etc. and is not exclusively so used, then the amount for proportionate use of the building etc. for dwelling house of the assessee—Sec. 38.

(7) In the case of any assessee—

(i) Any interest chargeable under this Act which is payable outside India on which tax has not been paid or deducted and in respect of which there is no person in India who may be treated as an agent u/s 163.

(ii) Any sum paid on account of any rate or tax levied on the profits or gains of any business or profession or assessed at a proportion of or otherwise on the basis of any such profits and gains.

(iii) Any payment which is chargeable under the head "Salaries", if it is payable outside India and if the tax has not been paid thereon or deducted therefrom.

(iv) Any payment to a provident or other fund established for the benefit of employees of the assessee, unless the assessee has made effective arrangements to secure that tax shall be deducted at source from any payments made from the fund which are chargeable to tax under the head "Salaries"—Sec. 40(a).

(8) In the case of any firm, any payment of interest, salary,

bonus, commission or remuneration made by the firm to any partner of the firm—Sec. 40(b).

(9) In the case of any company—

(i) Any expenditure which results directly or indirectly in the provision of any remuneration or benefit or amenity to a director or to a person who has a substantial interest in the company or to a relative of the director or such person as the case may be ;

(ii) any expenditure or allowance in respect of any assets of the company used by any person referred to above whether wholly or partly for his own purposes or benefit, if in the opinion of the I.T.O. any such expenditure or allowance is excessive or unreasonable having regard to the legitimate business needs of the company and the benefit by or accruing to it therefrom ; and

(iii) Any expenditure which results directly or indirectly in the provision of any benefit or perquisite whether convertible into money or not, to an employee (including any sum paid by the company in respect of any obligation which but for such payment would have been payable by such employee), to the extent such expenditure exceeds $\frac{1}{5}$th of the amount of salary (excluding dearness allowances and perquisites) payable to the employee for any period of his employment after 29.2.64. In the aforesaid expenditure gratuity or any payment as u/s 10 (5) or u/s 10 (6) (i) or u/s 10 (6) (vii) or u/s 17 (1) (vii) or u/s 17 (2) (v) or u/s 17 (3) (i) or (ii) or u/s 36 (i) (iv) or (v) or u/s 36 (1) (ix) shall not be taken into account—sec. 43 (c). The Finance Act, 1965 has amended these provisions. The effect of one of these amendments would be that the expenditure incurred by companies in providing any benefit or amenity or perquisite to their employess whose income chargeable under the head "Salaries" does not exceed Rs. 7,500 would not be taken into account for the purposes of the aforesaid provision—Sec. 40 (c).

(10) In the case of a banking company, the amount which

have been allowed as a deduction in computing its income under the head "Interest on Securities"—Sec. 40 (d).

Note :—The Finance Act, 1968, has, with effect from the A.Y. 1969-70, omitted sec. 40(c)(iii) (as given in Para 4, sub-clause 9(iii) on Page 120 above). It has inserted a new sub-clause (v) in sec. 40(a) effective from the A.Y. 1969-70. Thus the existing provision so far applicable to companies only has been extended to non-corporate employers also. It has also brought within the purview of the limit any expenditure or allowance admissible to the employer in respect of any assets provided by him to the employee free of charge or on a concessional basis. Thus, where an employer has provided residential accommodation or household equipment such as frigidaires, air-conditioners, ete. owned by him, to his employees free of charge, any expenditure incurred by the employer on the maintenance of these assets or any depreciation allowance admissible to him in respect thereof will also be brought within the purview of the limit over the deductible amount of expenditure in providing perquisites etc. to employees. Further, an alternative monetary limit of Rs. 1,000 p.m. for each employee (in addition to the limit of 20% of the salary) over the deductible amount of expenditure incurred by the employer in providing perquisites etc. to his higher paid employees has also been provided.

(11) The Finance Act, 1968 has inserted a new section 40A, effective from the A.Y. 1968-69 to further provide for expenses or payments not deductible in certain circumstances :—

(i) Where any expenditure is incurred in a new business or profession for which payment has been or is to be made to specified categories of persons (broadly, the tax payer's relatives or associate concerns), the expenditure to the extent it is considered to be excessive or unreasonable will not be allowed as a deduction in computing the profits of the business or profession. The reasonableness of any expenditure is to be judged having regard to the fair market value of the goods,

services or facilities for which payment is made or the legitimate needs of the business or profession or the benefit derived by the tax payer from the expenditure.

(ii) It is also provided that where in respect of any expenditure incurred in a business or profession, any payment is made in an amount exceeding Rs. 2,500, otherwise than by a crossed cheque drawn on a bank or a crossed bank draft, the expenditure will not be allowed as a deduction in computing the profits of the business or profession. This will apply in respect of payments made after a date to be notified by the Central Govt. in the Official Gazette, not being later than 31.3.69. Where any liability for expenditure is incurred during the accounting year relevant to the A.Y. 1969-70 or any later assessment year, and during any subsequent accounting year, any payment is made for such liability, in a sum exceeding Rs. 2,500, otherwise than by a crossed cheque on a bank or a crossed bank draft, the allowance originally made for the expenditure will be withdrawn.

5. **Excess Allowance in the past to be added back—Sec. 41.**

Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee, and subsequently during any previous year the assessee has obtained whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of cessation or remission thereof, the amount obtained by him or the value of benefit accruing to him shall be deemed to be profits and gains of business or profession and accordingly chargeable to tax as the income of that previous year, whether that business etc. is in existence or not. Similar provisions are applicable in the case of recovery of bad debts, allowed in the past. For example, if Rs. 6,000 as bad debts allowed to a trader in 1961-62 previous year were recovered by him in the previous year 1966-67, then Rs. 6,000 will be taxed as bad debts recovered as the income of the assessment year 1967-68.

6. Tax on Compensation receipts—Sec. 112.

Where the total income of an assessee, not being a company, includes any compensation or other payment u/s 28 (ii) as described in para 2 before, the tax payable by him on his total income shall be calculated in the following special manner upto the A.Y. 1967-68 :—

(i) Income-tax in the normal way on the total income as reduced by the amount of such compensation and by the amount of the interest on National Savings Certificates (Ist issue) & of the capital gains ;

(ii) The tax on the interest on N. S. C. (1st issue) and on capital gains, if any, computed in the manner laid down in Chapters IX and XVIII ; and

(iii) The tax on such compensation or other payment equal to the amount which bears to the income-tax which would have been payable on his total income as reduced by (a) the amount of capital gains, if any and (b) $\frac{2}{3}rds$ of the amount of such inclusion ;

the same proportion as the whole amount of such compensation or other payment bears to such reduced total income.

Note—This has been modified w. e. f. the A. Y. 1968-69 by an amendment by the Finance (No. 2) Act, 1967 (please see ch. XII).

PROBLEM No. 32.

The following are the particulars of income of Mr. Z for the previous year ended 30th September, 1967 :—

(1)	Income from property u/s 22...	Rs. 20,000
(2)	Compensation receipts u/s 28 (ii)...	Rs. 6,000
(3)	Capital Gains from long-term capital assets (land & buildings) u/s 45	Rs. 12,000

Compute the total income of Mr. Z for the assessment year concerned.

SOLUTION.

Computation of the total income of Mr. Z for the previous year ended 30th Sept., 1967 relevant to the A.Y. 1968-69.

				Rs.
Income from property				20,000
Compensation receipts				6,000
Long-term capital gains (Land & Buildings)				12,000
		Gross total income		38,000
Less : (1)	Deduction u/s 80 S : @ 25% of Rs. 6,000		1,500	
(2)	Deduction u/s 80 T :			
	(i) First Rs. 5,000 in full	5,000		
	(ii) 45% of Rs. 7,000	3,150	8,150	9,650
				28,350

PROBLEM No. 33.

Following is the Profit and Loss Account of a businessman for the year ending 31-12-67 :

	Rs.		Rs.
To Rent	6,000	By Gross Profits	52,300
,, Salary of Staff	5,200	,, Interest from Debtors	2,800
,, Diwali & Puja Expenses	400	,, Rent from Property	2,400
,, Interest on Loan	12,500	,, Sundry Income	1,600
,, Sundry Expenses	5,500	,, Commission	3,700
,, Bad debt	600		
,, Charity	100		
,, Reserve for Bad debts	200		
,, Rates	600		
,, Messing expenses	850		
,, Loss by theft	1,400		
,, Net Profit	29,450		
Total	62,800	Total	62,800

Note—(a) Rent of premises includes rent of Rs. 1,200 of a shop belonging to the assessee himself.

(b) Salary of staff includes salary of Rs. 2,400 to a son, who is a B. Com. student and who casually helps in the business.

(c) A loan of Rs. 15,000 at 16% p.a. is taken from his wife out of funds advanced by him.

(d) Sundry expenses include Rs. 900 being expenses incurred on pilgrimage to Hardwar.

(e) Messing expenses include Rs. 150 spent on tea of some guests of a local M.L.A.

(f) Loss by theft took place when a pretended customer stole a necklace worth Rs. 600. Rs. 800 were stolen from his house in the night by de-locking.

(g) He earned Rs. 4,000 in gold smuggling not shown in books.

(h) Rates include Rs. 400 for the property let. Compute the total income.

SOLUTION.

Computation of Total Income for the A.Y. 1968-69.

		Rs.	Rs.
A.	Business Income		
	Net Profits as per P & L A/c		29,450
	Less : Rent from property considered separately		2,400
			27,050
	Add :		
	1. Charity	100	
	2. Reserve for bad debts	200	
	3. Rent to self	1,200	
	4. Part salary to his son as it is not wholly for business (one half disallowed)...	1,200	
	5. Interest on loan taken from wife...	2,400	

6. Out of sundry expenses for pilgrimage to Hardwar	900		
7. Private entertainment...	150		
8. Loss by theft...	1,400		
9. Rates for property...	400		7,950
Add : income from gold-smuggling			35,000
			4,000
Business Income...			39,000
B. Income from property let :			
Rental value	2,400		
Less : ½ local taxes (400) ...	200		
	2,200		
Less : $\frac{1}{6}$th for repairs ...	366		1,834
Total Income ...			40,834
or, say,			40,830

Note—(1) Diwali & Puja expenses are incurred for business expediency. Hence they have been deducted in full.

(2) It is assumed that the house was constructed after 1-4-50.

PROBLEM No. 34.

Advise in brief a businessmen about the admissibility or otherwise of the following claims :—

(1) Loss of cash by an employee who was robbed on his way to deposit the money in the assessee's bank ;

(2) Embezzlement of cash by an employee ;

(3) Compensation paid to an employee for premature termination of his services ;

(4) Amount spent in a successful suit filed against another firm for infringing the assessee's trade mark ;

(5) Salary paid to an engineer for three months to supervise the erection of new machinery & plant ;

(6) Fees paid to an advocate in connection with a reference application to High Court under the Income-tax Act in respect of an earlier assessment ;

(7) Penalty paid to Customs Authorities for importing goods which yielded a large margin of profit ;

(8) Brokerage for raising a loan which was paid off during the a/c year ;

(9) Travelling expenses of a Director who went to Europe to negotiate the purchase of new heavy machinery, which was eventually installed during next year ;

(10) Cost of erecting a Medical Annexe of the factory for emergency treatment of the employees.

SOLUTION.

(1) It is not an admissible deduction as it is not really incidental to business.

(2) It is admissible as the loss has arisen out of the practical necessity of trader having to entrust certain duties to his employees.

(3) It is admissible provided the employee was dismissed in the interests of the trade and not merely on personal ground.

(4) It is an allowable expense.

(5) It is capital expenditure and hence will not be allowed.

(6) Such expenditure is regarded as having been spent in settlement of personal liability and hence not allowed.

(7) Penalties for illegal acts are not allowed.

(8) It is now admissible as being of revenue nature.

(9) Expenditure for setting up the business being preliminary expenditure is not allowed deduction as it is capital in nature.

(10) It being capital expenditure will be disallowed. However, depreciation will be admissible on the value thereof according to the normal rates prevailing at the time the expenditure is considered.

7. Depreciation, Development Rebate & Allowance—Sec. 32, 33, 33A, 34, 38, 41, 43 & 43A.

Depreciation represents dimunition in the value of an asset primarily due to wear and tear or passage of time. Depreciation is allowed only in respect of buildings, machinery, plant and furniture which are the *property of the assessee* and which are *used for purposes of business or profession*. The various

depreciation allowances and the terms used in this connection are given below :

(1) Normal depreciation—Sec. 32.

It is allowed on buildings, machinery, plant, and furniture at the *prescribed rates* on the *written down value* of the assets [and in the case of ships on the 'Actual' cost thereof]. As per Rule 5 of the I. T. Rules, 1962, depreciation is allowed at the full rate if the asset is used for 180 days or more, otherwise it is allowed at ½ rate only if used for more than 30 days and less than 180 days during the previous year. For the purpose of getting this deduction the prescribed particulars have to be given by the assessee. No depreciation is allowed on an asset bought and sold during the same previous year.

(2) Full cost as depreciation in one year—Sec. 32 (1) (ii), proviso.

The Finance Act, 1966 has made this amendment to the effect that in respect of any machinery or plant, the actual cost whereof does not exceed Rs. 750, acquired by the assessee for the purposes of the business or profession, the full amount of the actual cost of such machinery or plant would be allowed as a deduction by way of depreciation in the year in which such machinery or plant is acquired.

(3) Extra shift allowance.

If a *machinery or plant* is working in double or more shifts, a further *extra shift allowance* equal to 50% of the normal depreciation, in case of double shift and a further 50% (i.e., total extra 100%) for triple or more shifts, is granted to the assessee. For this purpose, the normal number of working days in the year is taken as 300.

(4) Initial Depreciation—Sec. 32 (1) (iv) & (v).

The Finance Act, 1961 revived the grant of initial depreciation (discontinued from 1-4-56) with some modifications. It

provides that in respect of buildings erected after 31-3-1961 by an employer for the residence of persons, employed in the business carried on by him and receiving remuneration not exceeding Rs. 7,500 p. a. [Increased from Rs. 200 p. m. by the Finance Act, 1966] *an initial depreciation at* 20% of the actual cost of the buildings will be allowed for the year of their erection. *It is not deductible in arriving at the W. D. V.*

The Finance (No. 2) Act, 1967 provides that an initial depreciation of 25% on buildings erected by an approved Indian hotel company after 31-3-67 will be allowed in respect of the previous year of erection or use of such building. This applies w.e.f. A.Y. 1968-69.

(5) Development Rebate—Sec. 33 & 34.

(a) The various rates of development rebate in different cases are given below :—

Sl. No.	Type of Asset	Period	%
A.	**New Assets :**		
1.	Ship	Acquired after 31-3-54 but before 1-1-1958	25
2.	Do	Acquired after 31-12-57	40
3.	Machinery & Plant	Installed after 31-3-54 but before 1-4-61	25
4.	Do	Installed after 31-3-61 but before 1-4-70	20
5.	Do	(In coal mining business) Installed after 31-3-63 but before 1-4-65	35
6.	Do	(In the business of construction or priority industries) : Installed after 31-3-65 but before 1-4-1970	35
7.	Do	Do—Installed ater 31-3-70	25
8.	Do	(In the premises of an approved hotel Co.] after 31-3-67 but before 1-4-70	35
9.	Do	Do—after 31-3-70	25
10.	Do		

11.	Do	Capital asset on scientific research after 31-3-67 but before 1-4-70	35
12.	Do	-Do- after 31-3-70	25
13.	Do	In any other business : Installed after 31-3-1970	15%
B.	**Old Assets :**		
14.	Ship	Acquired before the expiry of 7 years from the date she was built	30
15.	Do	In any other case	20
16.	Machinery & Plant	Installed after 31-3-64 but before 1-4-66 (In coal mining business)	20
17.	Do	In any other case	10

(b) The Finance Act, 1964 has made a provision for the grant of development rebate on old and second hand ships acquired after 31.3.64 at the rate of 20% of the actual cost as prescribed by the new Rule 5A subject to the following conditions :—

(i) such ship was not previous to the date of such acquisition owned at any time by any person resident in India ;

(ii) such ship is wholly used for the purpose of the business carried on by the assessee ;

(iii) such other conditions as may be prescribed.

Similarly, where an assessee who installs any second-hand machinery or plant shall be granted development rebate @ 10% provided the following conditions are fulfilled :

(i) such machinery or plant was not used in India at any time previous to the date of such installation by the assessee ;

(ii) it is imported in India by the assessee from any country outside India ;

(iii) no deduction on account of depreciation or development in respect of such machinery or plant has been previously allowed either under the old Act or the new Act.

(iv) such machinery or plant is wholly used for the purposes of the business carried only by the assessee.

(v) such other conditions as may be prescribed.

The development rebate under the above provision shall be allowed as a deduction in respect of the previous year in which the ship was acquired or the machinery or plant was installed or, if the ship, machinery or plant is first put to use in the immediately succeeding previous year, then in respect of that previous year.

(c) No development rebate is admissible on office appliances like typewriters or road transport vehicles like taxis, trucks, motor cars, scooters, cycles etc. or a machinery or plant installed after 31.3.65 in any office premises or in any residential accommodation including guest houses.

(d) In the case of launching of the ship, or installation of the above assets on or after 1-1-58, development rebate is to be given only when an amount equal to 75% of the development rebate actually to be allowed is debited to P & L a/c of the previous year and credited to a reserve account to be utilised by him during a period of eight years next following for the purposes of the business, other than for distribution by way of dividends or profits or remittance outside India as profit. Where a ship has been acquired after 28-3-66 the requirement for reserve will be only 50% & not 75%.

(e) If such ship machinery or plant is sold or otherwise transferred by the assessee to any person other than Govt., a local authority or a corporation established under any law or for any consideration not connected with any amalgamation or succession at any time before the expiry of eight years is which it was acquired or installed any allowance so made shall be deemed to have been wrongly allowed and will be recovered u/s 155.

(f) Development rebate to be allowed shall be only such amount as is sufficient to reduce the total income to nil.

Unabsorbed development rebate shall be carried forward to a period not exceeding 8 years. The main object of granting this rebate is to provide an incentive to the development of industrial enterprise in India. The development rebate will not be taken into account either in the written-down value or in computing the loss or profit on the sale or discard of plant and machinery.

(g) Subject to certain conditions where a Company is amalgamated with or into another Company under a scheme of "amalgamation" or where a firm is converted into a Company, any ship, machinery or plant on which development rebate is admissible to the predecessor is transferred by the predecessor to the successor, the development rebate already allowed in respect of the asset transferred will not be withdrawn and any unutilised portion of the development rebate shall be available to the successor. The condition in the case of a conversion of a firm into a Co., is that all the shareholders should have been partners in the firm ; and in the case of amalgamation of a Co. shareholders holding 9/10 of the capital should also be shareholders in the amalgamated company.

(h) The Finance Act, 1964 provides for a warning to the effect that development rebate may not be allowed on a ship acquired or machinery or plant installed after such date (not being earlier than 3 years) from the date of notification by the Central Govt. in this behalf.

(6) Development Allowance—Sec. 33A.

The Finance Act, 1965 has inserted a new sec. 33A to provide for a deduction by way of development allowance equivalent to 40% of the actual cost of planting of tea in new areas and 20% of the actual cost of planting in replacement of bushes in existing areas in computing income from a business of growing or manufacturing tea in India subject to certain conditions & limits, which are broadly similar to those in existence in respect of the deduction of development rebate in respect of ships, machinery or plant. The Finance Act, 1966, has

increased the above rates from 40% to 50% and from 20% to 30%. The actual cost of planting for the purpose of this allowance will be subject to a ceiling of Rs. 12,500 per hectare if the land is in a hilly area and Rs. 10,000 per hectare if the land is in any other area. This allowance will be admissible in respect of the expenditure on planting commenced after 31-3-65 and in respect of planting in replacement of bushes in an existing area where the planting has commenced after 31-3-65 and is completed before 1-4-70. The allowance will be made in two stages : first, in computing the income assessable for the assessment year relevant to the succeeding previous year next following the previous year in which the land has been prepared and again at the end of the four year period for the balance.

(7) **Written-down value—Sec. 43 (6).**

It means (a) the *actual cost* of an asset to the assessee in the case of an asset acquired *in the previous year ;* and (b) the *actual cost of an asset less all depreciation* (except the initial depreciation and development rebate) actually allowed to him, in case of an asset acquired *before the previous year.* In respect of any motor car with the exception of tourist taxis acquired after 31-3-67 (as amended by the Finance (No. 2) Act, 1967) acquired after 28-2-66 for more than Rs. 25,000, the excess price over Rs. 25,000 will be ignored.

(8) **Balancing Depreciation or Terminal Allowance or Obsolescence Allowance—Sec. 32 (1) (iii).**

Where a building, machinery or plant used for business purposes is sold or discarded or demolished or destroyed, *the excess of the written-down value over the sale price* or scrap value is allowed as balancing depreciation. For example, a machinery costing Rs. 1,00,000 is sold for Rs. 30,000. The written-down value (after taking initial depreciation into account) is Rs. 65,000. Therefore, balancing depreciation is Rs. 35,000 (i.e., Rs. 65,000 minus Rs. 30,000). In respect of a motor car costing more than Rs. 25,000 whose excess value is ignored the

sale price etc., will be taken as a proportion of Rs. 25,000 to the actual cost.

(9) Balancing charge—Sec. 41 (2).

When any building, machinery, plant or furniture is sold, discarded, demolished or destroyed *the excess of the sale price or scrap value over written-down value* (to the extent of the total depreciation allowed, including any initial depreciation) will be deemed to be profits of the year in which the sale took place. Such profits will be liable to tax and are known as "*balancing charge.*"

(10) Unabsorbed Depreciation—Sec. 32 (2).

When on account of the absence or insufficiency of profits of any business, the full or a part of the depreciation allowance *cannot be claimed*, the balance of the depreciation allowance not so claimed, is known as unabsorbed depreciation. The unabsorbed depreciation can be *carried forward indefinitely* to be claimed in subsequent years. It should be taken into account in determining the written-down value of an asset.

(11) Salient features regarding Depreciation & Dev. Rebate—

(i) *Normal depreciation* is allowed on buildings, machinery, plant and furniture. The rates of normal depreciation as per rule 5 of the Income-tax Rules, 1952, in certain cases are given below :—

(1) *Building* : (i) First class substantial buildings of selected material—2·5% ; (ii) second class buildings of less substantial construction—5% ; (iii) third class buildings—7·5%.

Double the numbers will be taken for factory buildings excluding offices, godowns, officers and employees' quarters.

(2) *Furniture & fittings*—general rate—10%.
Rate for furniture in hotels & boarding houses—15%.

(3) *Machinery & Plant*

(a) General rate—7%.

(b) Special rate in (i) flour, rice, sugar, match, tea, coffee, jute & shoe factories and mills, & Ginning and pressing machinery—9% ; (ii) Cement works, Paper mills, Iron & Steel Industry, Cotton & Woollen mills etc.—10%.

(c) Motor cars, Jeeps etc.—20%.

(d) Motor taxis, motor lorries, motor buses & motor tractors—25%.

(ii) Extra-Shift allowance is allowed in case of *plant and machinery* only.

(iii) Initial depreciation was allowed on *new buildings and new plant and machinery*, upto 31-3-56 only. But in respect of buildings erected after 31-3-61 and used for certain types of employees only, an initial depreciation at 20% and in respect of buildings of approved hotel cos., erected after 31-3-67 at 25% is allowed now.

(iv) Development rebate is given on *new plant and machinery* installed or new ships launched *wholly for business only*. It is also given on imported second-hand plant or machinery etc.

(v) Where balancing charge and any other amount as stated in para 5 is taxable after the closure of the business, the losses carried forward and otherwise not allowable, because of the non-existence of the business, should be set-off from the profits so taxable and the balance only should be subjected to tax. This is illustrated in Problem No. 38.

PROBLEM No. 35.

The following particulars for depreciation purposes are furnished by an assessee in connection with the assessment for the year ended on 31-3-1968 :—

Factory Building 1st class (Depreciation rate 5%)

	Rs.	Rs.
W.D.V. 1-4-1967	25,000	
Additions on 1-4-67 (erection commenced in 1966)	10,000	
		35,000
Machinery (Dep. rate 10%)		
W.D.V. on 1-4-1967	50,000	
Additions on 1-10-1967	12,000	
		62,000
Furniture (Dep. rate 10%)		
W.D.V. on 1-4-1967	3,000	
Additions on 1-1-1968	1,000	4,000

Calculate ordinary depreciation allowable and the W. D. V. on 1-4-1968.

SOLUTION

Depreciation Chart for the A.Y. 1968-69 :—

Asset.	W. D. V. on 1-4-67	Additions	Total	Rate %	Normal Dep.	W. D. V. as on 1-4-68
I. Factory Buildings :	25,000			5	1,250	
(on 1-4-67)		10,000	35,000	5	500	33,250
II. Machinery :	50,000			10	5,000	
(on 1-10-67)		12,000	62,000	10	1,200	55,800
III. Furniture :	3,000			10	300	
(on 1-1-68)		1,000	4,000	$10 \times \frac{1}{2}$	50	3,650

PROBLEM No. 36.

The following particulars for the depreciation purposes are furnished by an assessee for the accounting year ended 31st March, 1968 :—

	Factory Buildings (Depn. Rate 5%)	Machinery (Depn. Rate 10%)
W. D. V. on 1-4-67	10,000	20,000
Additions on 1-4-67	5,000	10,000
	15,000	30,000

The machine worked triple shift throughout the year.

Calculate the amount of depreciation and development rebate admissible for the assessment year 1968-69 and the written-down value on 1-4-68.

SOLUTION.

Factory Buildings :

Nomal Depreciation on Rs.	15,000 @ 5%		Rs. 750
W. D. V. on 1-4-68=Rs.	15,000		
Rs.	750		
Rs.	14,250		

Machinery :

Normal depreciation on Rs.	30,000 @ 10%	Rs.	3,000
Extra shift allowance for triple shift working @ 100% of the normal depreciation		Rs.	3,000
Development rebate on Rs.	10,000 @ 20%	Rs.	2,000
W. D. V. on 1-4-68=Rs.	30,000		
Less : ... ...Rs.	6,000		
Rs.	24,000		
Total amount of depreciation and development rebate ...		Rs.	8,750

N. B.—The extra shift allowance of 100% for triple shift working which was in force from 1949-50 to 1954-55 has again been introduced w. e. f. A. Y. 1964-65 by an amendment of the I. T. Rules.

PROBLEM No. 37.

Calculate the amount of depreciation and balancing allowance admissible to a businessman for the A. Y. 1968-69 (Accounting year being the Calendar year 1967) from the following particulars :—

Machinery—Old—W. D. V. on 1. 1. 1967—Rs. 20,000
New—Installed in March 1967 and sold in Sept. 67 Rs. 10,000
(Rate of depreciation is 10%)

Furniture—(Rate of depreciation is 10%)
W.D.V. on 1.1.1967...Rs. 6,000 (Original cost Rs. 12,000)
It was sold on 5.2.1967 for Rs. 3,500.

SOLUTION.

Calculation of Depreciation and Balancing Allowance for the Assessment Year 1968-69.

			Rs.
Machinery (Dep. rate 10%)			
Old--Depreciation @ 10% on Rs. 20,000 for full year			2,000
New—No depreciation will be given on new machinery installed in March 1967 as the same is sold away during the year.			
Furniture—(Dep. rate 10%)			
Balancing allowance : W. D. V...Rs.	6,000		
Less : sale price...Rs.	3,500		2,500
		Total...Rs.	4,500

PROBLEM No. 38.

Mr. Z, who maintained his books of account according to the financial year, closed down his business in the month of March, 1967 and sold away all the assets. The value of some machinery could not be determined in March, 1967. The net loss from business during the A.Y. 1967-68 was determined by the I.T.O. as Rs. 21,000. In the month of May, 1967 when the amount payable to him on the sale of certain machinery was

determined, it was found that he had realised a net sum of Rs. 50,000 as excess over the written-down value. Discuss the tax liability of Mr. Z for the A.Y. 1968-69.

SOLUTION.

U/s 41, for the A.Y. 1968-69 Mr. Z will be entitled to set-off the loss of Rs. 21,000 from the profit of Rs. 50,000. Thus he will be liable to tax on Rs. 29,000 (Rs. 50,000-21,000) only.

Questions.

Q. 1. What do you understand by the term 'Depreciation' ? How is it allowed ? Who is entitled to it, when, and to what extent ?

Ans. See para 7.

Q. 2. Write short notes on :—

(a) Development Rebate. (b) Obsolescence Allowance.
(c) Triple shift Allowance. (d) Written-down Value.
(e) Development Allowance for Tea Industry.
(f) Rehabilitation Allowance.
(g) Relief on additional rupee liability due to devaluation.
(h) Exports markets development allowance (i) Agricultural development allowance.

Ans. (a) See para 7
(b) ,, ,, 7
(c) ,, ,, 7
(d) ,, ,, 7
(e) ,, ,, 7
(f) ,, ,, 3(4)
(g) ,, ,, 3(10)
(h) ,, ,, 3(7)
(i) ,, ,, 3(8)

Q. 3. What deductions are expressly allowed to a businessman in computing taxable profit ? Specify the expenses disallowed.

Ans. See paras 3 and 4.

Q. 4. From the following profit and Loss Account of Sharad Chandra for the year ended 31st December, 1967 find out his taxable income from business :—

	Rs.		Rs.
To Office Expenses	5,720	By Gross Profit	27,635
,, General Expenses	2,640	,, Interest on Govt. securities	1,660
,, Interest on Bank Loan	480	,, Discount	365
,, Interest on capital	1,580	,, Bad debt recovered	440
,, Reserve for bad debts	835	,, Profit on sale of investments	750
,, Audit Fees	300	,, Sundry receipts	350
,, Rent	2,030		
,, Income-tax	1,760		
,, Charity	485		
,, Law charges	370		
,, Compensation paid to a retrenched employee	1,500		
,, Extension of Building	1,500		
,, Net Profit	12,000		
	31,200		31,200

In computing the income, the following facts should be taken into consideration :—(a) In the item of rent, Rs. 600 is included in respect of the rent of office building which belongs to the proprietor himself, (b) In the amount of salaries, Rs. 320 is included in respect of employer's contribution to a P. F. which is recognised, (c) General expenses include Rs. 350 in respect of cost of new furniture purchased during the year, and (d) Amount of depreciation allowable according to Rules works out at Rs. 1,285.

Ans. Rs. 15,420.

Q. 5. The following particulars for depreciation purposes are furnished by an assessee for the accounting year ended on 31st December, 1967 :—

Machinery	*Building*	*Furniture*
Rate...10%	5%	10%
W.D.V. on 1-1-67		
Rs. 1,00,000	Rs. 50,000	Rs. 10,000
New additions :		
on 1-7-67		
Rs. 50,000	Rs. 20,000	Rs. 1,000

Calculate the amount of depreciation and development rebate admissible for the assessment year 1968-69 and also find out the W.D.V. as on 1-1-1968.

Ans. Depreciation Rs. 19,600 ;
Development rebate Rs. 10,000 ;

W.D.V. on 1-1-1968 :—

Machinery	*Building*	*Furniture*
Rs. 1,35,000	Rs. 66,500	Rs. 9,900

CHAPTER IX

CAPITAL GAINS [Sections 45 to 55]

1. Capital gains on transfer of capital asset [Sec. 45(1)].

The Finance (No. 2) Act 1956, revived with some modifications the scheme of capital gains tax which was in existence during the period 1st April, 1946 to 31st March, 1948. Section 45 (1) provides that tax shall be payable by an assessee under the head "Capital Gains" in respect of any profits arising from the sale, exchange, relinquishment etc., (transfer) of a capital asset effected after 31st March, 1956, and that such profit shall be deemed to be income of the previous year in which the sale, exchange, relinquishment etc., took place.

2. Capital gains on Bonus shares [Sec. 45(2)(3) & (4)].

The Finance Act, 1964, w.e.f. the A. Y. 1964-65 introduced a new provision for treating the value or bonus shares received as income under the head "capital gains" even when they are not actually transferred by the assessee. The provisions in this regard have now been abolished by the Finance Act, 1966.

3. Meaning of 'Capital Asset'—Section 2(14).

The term 'Capital Asset' means property of any kind held by an assessee, whether or not connected with his business or profession, but does not include ;

(i) Any stock-in-trade, consumable stores or raw materials held for business purposes ;

(ii) personal effects (i.e., wearing apparel, jewellery, furniture etc.) ;

(iii) agricultural land in India ;

(iv) 6½% Gold Bonds, 1977 or the National Defence Gold Bonds, 1980 issued by the Central Government.

4. **Exemptions—Sec. 46, 47, 53, 54 & 54A.**

The following kinds of capital gains have been expressly exempted from tax :—

(1) Gains arising on the transfer of capital asset under a gift, or will or an irrevocable trust.

(2) Gains arising on the distribution of capital assets on the total or partial partition of a Hindu undivided family.

(3) Gains arising on the transfer by a parent company of its capital assets, to a wholly-owned Indian Subsidiary company which is resident in India.

(4) Gains arising on distribution of capital assets on the dissolution of a firm, body of individuals or association of persons.

(5) Gains as or result of distribution of the capital assets of a company in liquidation.

(6) Gains as a result of transfer of a capital asset by a 100% subsidiary company to its Indian holding company. This is added by the Finance Act, 1965.

(7) Gains arising out of any transfer of a capital asset by the amalgamating company to the amalgamated Indian Company, in a scheme of amalgamation. This is added by the Finance (No. 2) Act, 1967.

(8) Gains arising out of any transfer by a share-holder, in a scheme of amalgamation, of a capital asset being a share or shares held by him in the amalgamating company, if the transfer is made in consideration of the allotment to him of any share or shares in the amalgamated Indian Company. This is added by the Finance (No. 2) Act, 1967.

(9) Gains arising on the sale of residential house property which had been occupied by the assessee or his parents for two years, if the capital gains have been fully invested in the purchase of residential property within

one year before or after the capital gains arose. The same exemption has also been extended to construction of a house property within two years after that date. But if the capital gains exceed the cost of the new property, the excess will be taxable.

(10) If the fair market value of all the properties owned by an assessee does not exceed Rs. 50,000 and if he sells one of his properties for a sum not exceeding Rs. 25,000, no tax is payable on the capital gains resulting from such sale.

(11) The Finance Act, 1965 has inserted a new sec. 54A in the I.T. Act. An individual who is not a citizen of India or a company which is not an Indian company transferring any shares held by him or it in an Indian company and becoming liable to pay tax on the capital gains arising out of such transfer will be entitled to a credit of the whole or part of the tax so payable in proportion to the amount of the proceeds of the transfer as reduced by the cost of acquisition of the transferred shares which are reinvested in any of the approved investment within a period of *two years* from the date of the transfer of the shares.

PROBLEM No. 39.

Mr. X sold his residential house on 15-9-67 for Rs. 1,23,000. The capital gains within the meaning of sec. 45 amounted to Rs. 63,000. He constructed a new house at a total cost of Rs. 71,000. The construction was completed in the month of August, 1968. Discuss the liability of Mr. X in respect of Capital Gains.

SOLUTION.

U/s 54 Mr. X is not liable to pay any tax on the amount of Capital Gains as he has within a period of two years after the date of sale of the old residential house constructed another house and the amount of Capital Gains, i.e., Rs. 63,000 is less

than the expenditure on the new asset viz., Rs. 71,000. However, if the assessment for the year 1967-68 is completed before Aug., 67, and the amount of Rs. 63,000 is included in the assessment of Mr. X for the A. Y. 1968-69 then the assessment shall be revised u/s 155 and the amount of Rs. 63,000 shall be deleted from the assessment.

5. **Deductions—Section 48-52 & 55.**

The following deductions from the full value of the consideration for which the sale etc., is made are allowed in computing the amount of taxable capital gains :—

(*1*) *Expenditure incurred wholly, necessarily & exclusively in connection with the sale etc., and*

(*2*) *the actual cost to the assessee of the capital asset* including the cost of any additions or improvements but excluding any expenditure for which an allowance is admissible under this head. However, this is, subject to the following provisions :—

(a) Where a person who acquires a capital asset from the assessee is a person with whom the assessee is directly or indirectly connected and the I.T.O. has reason to believe that the sale etc., was effected with the object of tax avoidance, the full consideration for which the sale etc., is made, shall, with the approval of the I. A. C., be the fair market value of the capital asset on the date of sale etc.

(b) The Finance Act, 1964 provides that if in the opinion of the I. T. O. the fair market value of a capital asset transferred by the assessee exceeds the full value of the consideration by 15% or more of the value so declared, the full value of the consideration for such capital asset shall, with the previous approval of the I.A.C., be taken to be its fair market value on the date of its transfer.

(c) Where the capital asset is one for which the assessee has obtained depreciation allowance in any year, actual cost of

an asset to the assessee shall be its written-down value increased or diminished by any adjustment u/s 32(1)(iii) or 41 (2).

(d) The assessee is given the option to adopt instead of the cost of a capital asset, its fair market value as on 1st January, 1954 in respect of acquisition before that date.

(e) Where any capital asset has become the property of the assessee by succession, inheritance or devolution or on any distribution of capital assets on the partition of an H. U. F. or on the dissolution of a firm or on the liquidation of a company or under a deed of gift, its actual cost to him will be its actual cost to the last previous owner thereof who has acquired the same otherwise than under gift etc., plus the cost of any improvements less any depreciation allowed. Where the actual cost to the previous owner cannot be ascertained, the fair market value at the date on which the capital asset became the property of such previous owner shall be deemed to be the actual cost thereof.

(f) Where the capital asset was on a previous occasion the subject of negotiation for sale etc., any option or other money received and retained by the assessee in respect of such negotiations shall be deducted in computing the actual cost of such asset to him.

(g) The fair market value of the bonus shares sold-shall be taken as the actual cost or value as given in para 2, above, viz., equal to the amount of capital gain u/s 45 (2).

(h) Where the capital asset, being a share or a stock of a company, became the property of the assessee on the consolidation, conversion, sub-division etc., of the share capital of the company, the actual cost shall mean the cost of acquisition of the asset calculated with reference to the cost of acquisition of the shares or stock from which such asset is derived.

(i) No deduction in respect of the cost of bonus shares is allowed u/s 48 when they are transferred within 30 days of allotment.

6. Computation of Tax on Capital Gains —Sec. 114 & 115

A distinction has been created between short-term capital assets and long-term capital assets regarding the chargeability of tax on profits arising therefrom, and set-off and carry-forward of losses etc., in respect thereof. Several important changes have been made by the Finance Acts of 1964, 1965, 1966, 1967 and 1968.

Definition of "Short-term capital asset"—According to section 2 (42A) 'short-term capital asset' means a capital asset held by an assessee for not more than twelve months (increased to 24 months by an amendment by the Finance Act, 1968 w.e.f. A. Y. 1969-70 only) immediately preceding the date of its transfer. Any other asset is a long-term capital asset.

This definition had been amended by the Finance Act, 1966. The effect of the amendment is that capital gains arising from the transfer of a bank certificate obtained by a person from an authorised dealer in foreign exchange in evidence of remittance of money to India from abroad during the period from 26-10-65 to 31-5-66 (or any other extended period by the Govt.) will, in no circumstances, be treated as capital gains arising from the transfer of a short-term capital asset. Such capital gains will be chargeable to tax in the same manner as capital gains arising from the transfer of a long-term capital asset.

Explanation—(i) In determining the period for which any capital asset is held by the assessee—

(a) In the case of a share held in a company in liquidation there shall be excluded the period subsequent to the date on which the company goes into liquidation ;

(b) In the case of a capital asset which becomes the property of the assessee in the circumstances mentioned in clauses (i) to (iv) of section 49, there shall be included the period for which the asset was held by the previous owner referred to in the said section.

(c) in the case of a capital asset being a share or shares in an Indian Company which becomes the property of the assessee in consideration of a transfer mentioned in sec. 47(iii) (i.e., under a scheme of amalgamation) there shall be included the period for which the said share (s) in the amalgamating Co. were held by the assessee.

(A) **Companies**—Companies are required to pay income-tax on capital gains arising from short-term as well as long-term capital assets at the following rates :—

(i) 40% on long-term capital gains as relate to buildings or lands or any rights threin,

(ii) 30% on the balance of other long-term capital gains, and

(iii) The amount of income-tax with which it would have been chargeable had its total income been reduced by the amount of long-term capital gains.

(B) Other assessees : I. Upto the A.Y. 1967-68 :—(i) Income-tax is payable on capital gains in respect of 'short-term capital assets' at the average rate applicable to total income (as reduced by compensation amounts u/s 112 and of the interest on National Savings Certificates (1st Issue) u/s 112 A and capital gains on long term capital assets).

(ii) Capital gains on long-term capital assets are chargeable to tax in a different manner. In this connection the Finance Act, 1964 has made a distinction between such long-term capital gains in respect of buildings or lands or other capital assets.

(iii) Long-term capital gains relating to buildings or lands will be liable to income-tax at $\frac{3}{4}$ths of the average rate of income-tax which would have been applicable to the total income as reduced by the amount of compensation etc., u/ss 112 & 112A and long-term capital gains u/s 45.

(iv) Long-term capital gains relating to other capital assets will be liable to income-tax at $\frac{1}{2}$ of the average rate of income-tax which would have been applicable to the total income as referred to in (iii) above.

(v) No income-tax is payable on long-term capital gains upto Rs. 5,000 (which sum is fully exempt).

(vi) Such capital gains will also be exempt from income-tax if the total income (including such capital gains) do not exceed Rs. 10,000.

(vii) The former ceiling of tax rate of 25% on such capital gains has been abolished. Now a minimum rate of tax @ 15% on all long-term capital gains (in excess of Rs. 5,000 only) has been fixed. Thus where the average rate of tax referred to in (iii) & (iv) above is less than 15% the long-term capital gains would be subject to tax at 15%

The above provisions are applicable upto the A.Y. 1967-68.

II. For the A.Y. 1968-69 & onwards :—

The Finance (No. 2) Act, 1967 has omitted sec. 114 and has inserted a new sec. 80T in the I. T. Act, w.e.f. the A.Y. 1968-69 to provide for straight deduction in the case of long-term capital gains of non-corporate assessees while computing their total income. The amount of deduction is as under :—

(1) Full amount of long-term capital gains-where the gross total income does not exceed Rs. 10,000 or where the long-term capital gains do not exceed Rs. 5,000.

(2) Rs. 5,000+(i) 45%of the long-term capital gains relating to lands or buildings or any rights therein as exceed Rs. 5,000 and

(ii) 65% of the long-term capital gains relating to any other capital assets as exceed Rs. 5,000.

Where there are long-term capital gains in relation to buildings or lands as well as other capital assets, for the deduction of first Rs. 5,000, the long-term gains relating to buildings or lands will be given preference over other long-term gains, in such a manner that the initial deduction of Rs. 5,000 is not allowed twice.

7. Set-off and carry-foward of capital losses—See. 74.

The capital losses relating to short-term capital assets of any year which cannot be wholly wiped off by the capital gains of that year shall be carried forward to be set off against capilal gains from short-term capital assets only for a period of eight years. The capital losses in excess of Rs. 5,000 only pertaining to long-term capital assets can be carried forward for set-off against capital gains from such long-term capital assets for a period of four years only. For and from the A.Y. 1968-69 short-term capital losses may be set-off against the income under any other head [as amended by the Finance (No. 2) Act, 1967].

PROBLEM No. 40.

In the following examples find out the amount of capital gains for the assessment year 1968-69 :—

(i) Mr. X sold a machinery on 15-8-66 for Rs. 14,500. The cost price of the machinery bought on 1.2.1953 is Rs. 2,500. The fair market value of the same on 1-1-54 is Rs. 10,000. The income of Mr. X from other sources during the previous year is Rs. 12,700.

(ii) Shri Prem sold a machinery for Rs. 25,000. It was purchased on 1-8-64 for Rs. 18,000. The income of Shri Prem from all other sources is Rs. 1,200.

(iii) Shri Satish who owns properties worth Rs. 48,000 sold one of the properties for Rs. 27,000. The fair market value of the property sold on 1-1-54 was Rs. 21,000. His income from all other sources was Rs. 11,560.

(iv) Shri Subhash who owns properties worth Rs. 72,000 sold one of his properties for Rs. 21,000. The fair market value of the property sold was Rs. 15,500 on 1-1-54. His income from other sources was Rs. 4,600. Would it make any difference if his income from other sources is only Rs. 4,400 ?

(v) Shri Suresh, who owns several properties the aggregate fair market value of all of which comes to Rs. 46,200, sold one of his properties purchased in 1944 for Rs. 2,000, for Rs. 24,000. The fair market value of the property sold was Rs. 13,000 on 1-1-54. His only other income was interest on fixed deposits of Rs. 100.

(vi) Shri Chandubhai who owns properties worth Rs. 1,20,000 sells one of the properties in which he has been residing for the last five years for Rs. 57,000. The fair market value of the property sold was Rs. 26,000 on 1-1-54. Within a year of the sale he purchased another property for his own residence ror Rs. 37,000. Would it make any difference if the purchase price of the property were Rs. 18,000 only? His income from all other sources was Rs. 20,000.

(vii) M/s. Asha Publishing House Ltd. a 100% subsidiary Co. of Subhash Ltd. an Indian holding Co. of the former transferred some machinery to the latter. The Capital Gains arising out of the transaction are Rs. 29,000.

(viii) Shree Laxmi Chand sold a building for Rs. 29,500. The actual cost of the capital asset to him is Rs. 9,500.

SOLUTION.

(i) The capital gains on long-term capital asset is Rs. 4,500. He is not liable to any tax on Rs. 4,500 as the first Rs. 5,000 of long-term capital gains is fully deductible—Sec. 80T.

(ii) The capital gains of Rs. 7,000 on long-term capital asset is not taxable in the hands of Shri Prem as the amount of total income including the capital gains does not exceed Rs. 10,000—Sec. 80T.

(iii) The amount of capital gains on the sale of property is Rs. 6,000 (Rs. 27,000-21,000). This is taxable along with his other income of Rs. 11,560. No exemption u/s 53 can be granted to him as the sale consideration of the property sold exceeds Rs. 25,000.

(iv) The capital gain arising to Sri Subhash out of the sale of one of his properties is Rs. 5,500 (Rs. 21,000-15,500). This item is taxable along with his other income of Rs. 4,600, thus making the total income Rs. 10,100. No exemption u/s 53 can be granted to him as the fair market value of all the properties exceeds Rs. 50,000. If his income from other sources were Rs. 4,400 only then the total income would have been Rs. 9,900. The capitdl gains would not have been liable to income-tax under the new sec. 80T as the total income has not exceeded Rs. 10,000.

(v) The capital gain arising to Sri Suresh is Rs. 11,000 (Rs. 24,000-13,000). This is exempt u/s 53 as the market value of the properties does not exceed Rs. 50,000 and the consideration of the property does not exceed Rs. 25,000. The only other income viz., interest from fixed deposits of Rs. 100, being below taxable limit, he is not liable to any tax.

(vi) The capital gain arising to Sri Chandubhai out of the sale of one residential house property is Rs. 31,000 (Rs. 57,000-26,000). He is not liable to any tax on this capital gain as he has purchased another residential house property within one year and the value of which is more than the capital gains. Hence the capital gain is exempt u/s 54. It would have made considerable difference if the value of the property purchased were Rs. 18,000. In the latter case the difference between capital gains and the value of the property newly purchased, i.e., Rs. 13,000 (Rs. 31,000-18,000) would

be taxable u/s 45 read with sec. 54. Thus the gross total income of Sri Chandubhai in this case would have been Rs. 20,000 plus Rs. 13,000=Rs. 33,000 & the total income=Rs. 33,000—8,600 (i.e., 5,000+45% of 8,000) =Rs. 24,400.

(vii) The sum of capital gains arising to M/s. Asha Publishing House Ltd., i. e., Rs. 29,000 is not taxable and is completely exempt u/s 47.

(viii) The capital gain arising to Sri Laxmi Chand is Rs. 20,000 (Rs. 29,500—Rs. 9,500 written-down value) minus Rs. 6,500 (16,000-9,500)=13,500 under section 50. This is taxable.

PROBLEM No. 41.

X is a manufacturer. On 1-6-67 he sold for Rs. 70,000 some machinery which had cost him Rs. 50,000, and in respect of which Rs. 16,200 had been allowed as depreciation. Besides, his income from all other sources was Rs. 65,000. Compute his total income for the A. Y. 1968-69, assuming that he does not make any annuity deposit ?

SOLUTION.

In this example there is a total gain of Rs. 36,200 computed as :

	Rs.	Rs.
Sale consideration	70,000	
Less : W. D. V.—(50,000-16,200)	33,800	= 36,200

Out of this Rs. 16,200 would be taken u/s 41 (2) as balancing charge, while the balance of Rs. 20,000 would be taxable as capital gains u/s 45. His total income will be computed as under :—

Income from business & other sources	... 65,000
Balancing charge u/s 41 (2)	... 16,200
Capital Gains u/s 45	... 20,000
Gross Total Income	... 1,01,200

Less : Deduction u/s 80T :		
First Rs. 5,000 in full	5,000	
45% of the next Rs. 15,000	6,750	11,750
	Total Income	89,450

He will pay income-tax on Rs. 89,450 at the rate applicable to Rs. 89,450.

PROBLEM No. 42.

M/s. Subhash Ltd., a public limited company sells one of the buildings for a sum of Rs. 1,20,000. The original cost of the building is Rs. 80,000 and the written-down value of the same is Rs. 30,000. Find out the amount of capital gains on this long-term capital asset and income-tax for the assessment year 1968-69.

SOLUTION.

The capital gain arising to M/s. Subhash Ltd. is Rs. 40,000 (1,20,000—80,000). The Co. will pay income-tax at the rate of 40% which comes to Rs. 16,000.

PROBLEM No. 43.

During the previous year ended 31st March, 1968 Mr. A had the following income :—

(i) Rs. 3,000 profit on sale of shares of a coal company ; the shares were bought by him on 16.4.67 for a sum of Rs. 12,000 and were sold by him on 27.8.67 for a sum of Rs. 15,000.

(ii) Rs. 6,000 profit on sale of shares of tea company ; the shares were bought by him in June, 1964 for a sum of Rs. 20,000 and were sold by him on 19.9.67 for a sum of Rs. 26,000.

(iii) Rs. 22,000 income from house property.

Compute the total income of Mr. A for the assessment year 1968-69.

SOLUTION.

The total income of Mr. A for the A. Y. 1968-69 is as under :—

			Rs.
(i)	Capital gains on short-term capital assets		3,000
(ii)	Capital gains on long-term capital assets (shares)		6,000
(iii)	Income from property		22,000
	Gross Total income...		31,000
	Less : Deduction u/s 80 T :		
	First Rs. 5,000 in full	5,000	
	Next Rs. 1,000 @ 65%	650	5,650
	Total Income		25,350

PROBLEM No. 44.

Usha Ltd. a public limited company within the meaning of sec. 108, had the following income for the previous year ended 31st December, 1967 :—

		Rs.
(1)	Business income	1,00,000
(2)	Capital gains on short-term capital assets	10,000
(3)	Capital gains on long-term capital assets (shares)	20,000
(4)	Capital gains on long-term capital assets (land)	5,000

Compute the total income and tax payable by the company.

SOLUTION.

The total income of Usha Ltd. is Rs. 1,35,000

The tax payable by the company for the A. Y. 1968-69 is computed as under :

					Rs.
(1)	On Rs.	1,10,000	@	55%	60,500
(2)	,, ,,	20,000	@	30%	6,000
(3)	,, ,,	5,000	@	40%	2,000
	On Rs.	1,35,000		Total tax=	68,500

Questions.

Q. 1. Write a short essay on Capital Gains.

Ans. See paras 1 to 7.

Q. 2. Write short notes on :—

(i) Capital Assets.

(ii) Capital gains exempt from tax.

(iii) Short-term capital asset.

Ans. (i) See para 3

(ii) „ „ 4

(iii) „ „ 6

Chapter X

INCOME FROM OTHER SOURCES

—Sections 56 to 59.

1. General. Under this residuary head of income, tax is payable by an assessee in respect of income, profits and gains of every kind which do not fall under any of the other heads of income. In particular, and without prejudice to the generality of the above statement, the following income shall be chargeable to tax under this head, viz.,

(i) dividends ;

(ii) an annuity due or the commuted value of any annuity paid u/s 280 D of the I.T. Act ;

(iii) income from machinery, plant or furniture belonging to the assessee and let on hire, if the income is not chargeable to tax under the head "Profits and gains of business or profession ;"

(iv) where an assessee lets on hire machinery, plant or furniture belonging to him and also buildings, and the letting of the buildings is inseparable from letting of the said machinery, plant or furniture, the income from such letting, if it is not chargeable to income-tax under the head "Profits and gains of business or profession."—Sec. 56.

2. Deductions—Sec. 57.

The income chargeable under this head shall be computed after making the following deductions, viz.,

(i) in the case of dividends, any reasonable sum paid by way of commission or remuneration to a broker or any other person for the purpose of realising such dividend on behalf of the assessee ;

(ii) in the case of income referred to in clause (iii) & (iv) of the above pare, deductions, so far as may be, in accordance with the provisions of sec. 30, 31, 32, 34 & 38 ;

(iii) any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly, and exclusively for the purpose of making or earning such income.

3. Personal expenses of the assessee are not deductible from the income under this head. Likewise the provisions of new sec. 40A and new sec. 40 (a) (v) are also applicable to income from other sources"—sec. 58. When any building, plant or machinery to which sec. 56 (2) (ii) & (iii) applies, are sold, discarded, demolished or destroyed, the provisions of sec. 41 (2) shall apply in finding out the profits chargeable to tax under this head. Similarly, the provisions of sec. 41(1) are applicable for charging to tax any excessive allowance made in the past.—Sec. 59.

4. **Definition :** It is provided that income from other sources shall include dividends—Section 56 (2)(i). A dividend received by a shareholder is deemed to be his income for the previous year in which *it is declared, distributed or paid.* The Finance Act, 1965 has amended sec. 8 to provide that an *interim dividend* paid by a company shall be deemed to be the income of the previous year in which the amount of such dividend is unconditionally made available by the company to the member who is entitled to it. Thus the taxability of the interim dividend will be determined without regard to the method of accounting followed by the assessee. Besides, the amounts distributed in cash by a company to its shareholders in the usual course out of the year's profits which are dividends liable to tax in the hands of the shareholders, the following specific distributions are also included in 'dividends' as per sec. 2 (22) :—

(a) any distribution by a company of accumulated profits whether capitalised or not, if such distribution entails the release by the company to its shareholders of all or any part of the assets of the company ;

(b) any distribution to its shareholders by a company of debentures, debenture-stock, or deposit certificates in

any form whether with or without interest, and any distribution to its preference shareholders of shares by way of bonus, to the extent to which the company possesses accumulated profits, whether capitalised or not ;

(c) any distribution made to the shareholders of a company on its liquidation, to the extent to which the distribution is attributable to the accumulated profits of the company immediately before its liquidation, whether capitalised or not ;

(d) any distribution by a company on the reduction of its capital to the extent to which the company possesses accumulated profits which arose after the end of the previous years ending next before the 1st day of April, 1933, whether such accumulated profits have been capitalised or not ;

Note :—The Finance Act, 1965 inserted an amendment to provide that the distribution received by the shareholder of a company on the reduction of its capital or on its liquidation would, to the extent of such distribution attributable to the capitalised profits of the company from which bonus shares have been issued by it to its equity shareholders after 31-3-64, not be chargeable to tax in the hands of the shareholder as his dividend income. The Finance Act, 1966 has provided that it will apply to the bonus shares issued before 1-4-65.

This is because the tax on deemed capital gains on bonus shares has been abolished w. e. f. A. Y. 1966-67.

(e) any payment by a company, not being a company in which the public are substantially interested of any sum (whether as representing a part of the assets of the company or otherwise) by way of advance or loan to a shareholder or any payment by any such company on behalf or for the individual benefit of

a shareholder, to the extent to which the company in either case possesses accumulated profits ; but 'dividend' does not include :—

(i) a distribution made in accordance with sub-clause (c) or sub-clause (d) in respect of any share issued for full cash consideration where the holder of the share is not entitled in the event of liquidation to participate in the surplus assets ;

(ii) any advance or loan made to a shareholder by a company in the ordinary course of its business where the lending of money is a substantial part of the business of the company ;

(iii) any dividends paid by a company which is set off by the company against the whole or any part of any sum previously paid by it and treated as a dividend within the meaning of clause (e), to the extent to which it is set off.

Explanation 1 & 2.—The expression "accumulated profits", whereever it occurs in this clause, shall not include capital gains arising before the 1st day of April, 1946, or after 31st day of March, 1948, and before the 1st day of April, 1956. In sub-clause (c) it shall also include all profits of the company upto the date of liquidation but shall not, where the liquidation is consequent on the compulsory acquisition of its undertaking by the Government or a Govt. corporation include any profits of the company prior to 3 successive previous years immediately preceding the previous year in which such acquisition took place.

5. 'Tax-free' and 'Less-tax' Dividends.

These terms are generally used with reference to the dividends declared on preference shares. A preference share may carry as respects dividends, a preferential right to be paid a fixed amount or an amount calculated at a fixed rate which may be either "free of income-tax" or "subject to income-tax" vide section 85 of the Companies Act, 1956.

The term 'tax-free dividend' dose not mean that the shareholder is not liable to income-tax on his income from *that* dividend. It simply means that the company shall pay to the shareholder the stipulated rate of *dividend without any deduction on account of the income-tax payable by the Company.*

The term "subject to income-tax" or "less-tax" means that the Company can, from the stipulated rate of dividend, *make a deduction to the extent of the income-tax which it is liable to pay* on an amount of income equivalent to the stipulated dividend.

The deduction of income-tax in this case should be distinguished from deduction of taxes at source at the prescribed rates u/s 194 of the Act and for which due credit is to be given to the shareholder u/s 199 for the tax so deducted at source and paid over to the government. For full details re : deduction of tax at source from dividends please refer to Chapter XX.

Questions.

Q. 1. Write a short note on Dividends.

Ans. See paras 4 to 6.

Q. 2. What is the difference between tax-free and less-tax dividends ? Explain.

Ans. See para 5.

Chapter XI

AGGREGATION OF INCOME & SET-OFF AND CARRY FORWARD OF LOSSES

1. Having studied the method of computing income under different heads of income as per the discussion in Chapters V to X, we are ordinarily in a position to compute the total income. But, while computing the total income, we sometimes come across certain matters not described earlier, e.g., losses incurred by the assessee in the past, or the income of the wife from the same partnership firm in which the husband is a partner or income from certain settlements or certain credits in the books of account of the assessee which he is not able to explain satisfactorily. Then the problem will be how to make adjustments for such matters while proceeding to compute total income. Hence it is utmost essential to know certain miscellaneous provisions which directly or indirectly affect the computation of total income. Such provisions are divided into three sections in this Chapter :—

A. Income of other persons included in assessee's total income.

B. Cash Credits & Unexplained Investments etc.

C. Set-off OR Carry-forward and set-off of losses.

A. Income of other persons included in assessee's total income—Sections 60 to 65.

2. Transfers & Settlements—Sections 60 to 63.

In connection with the computation of total income, the effects of transfers and settlements are as follows :—

(i) All income arising to any person by virtue of a transfer whether revocable or not and effected at any time, shall be chargeable to tax as the income of the transferor (and not that of the transferee) and shall be included in his total income, *if there is no transfer of the assets* from which the income arises.

(ii) All income arising to any person by virtue of *a revocable transfer of assets* shall be chargeable to tax as the income of the transferor (and not of the transferee) and shall be included in his total income. A transfer shall be deemed to be revocable if—(a) it contains any provision for the re-transfer directly or indirectly of the whole or any part of the income or assets of the transferor, or (b) it in any way, gives the transferor a right to re-assume power directly or indirectly over the whole or any part of the income or assets.

Exceptions to the above :—

The provision contained in (ii) above shall not apply to any income arising to any person by virtue of a transfer—(a) by way of trust which is not revocable during the life-time of the beneficiary, and, in the cases of any other transfer, which is not revocable during the life-time of the transferee ; or

(b) made before 1-4-1961, which is not revocable for a period exceeding six years.

N B.—The word "transfer" as stated above includes any settlement, trust, covenant, agreement or arrangement by virtue of sec. 63(b) of the Act.

PROBLEM No. 45.

Mr. Naresh makes an arrangement with Mr. Suresh whereby the latter is to receive the income from certain debentures belonging to Mr. Naresh, for a period of twenty years. However, the debentures are not transferred to Mr. Suresh. During the year ended 31.3.68 the income from the said debentures amounted to Rs. 5,000. Besides, the incomes of Mr. Naresh & Mr. Suresh for the same year amounted to Rs. 10,000 & Rs. 12,000 respectively. Compute the total income of both for the assessment year 1968-69.

SOLUTION.

In this case, the provisions of para 2 (i) as described above are applicable. Hence the income of Rs. 5,000 from the debentures will be added to the income of the transferor, i.e.,

Mr. Naresh. Thus the total income of both will be Rs. 15,000 (Rs. 10,000+5,000) and Rs. 12,000 respectively.

PROBLEM No. 46.

X makes a settlement on 1.4. 67 under which he transfers certain assets yieldlng Rs. 5,000 fixed income per year to Y for a period of eight years. Thereafter the assets and the income thereof are to revert back to the settlor. Discuss the tax liability of X & Y in respect of Rs. 5,000 and state what difference it will make if the settlement were made on 24.3.61 ?

SOLUTION.

As the settlement is made revocable, the settlor, i.e., X is to be charged to tax in respect of the income of Rs. 5,000 p. a. However, if the settlement were made on 24.3.61, a difference in the liability would occur, for the same would then come within the exception stated in para 2 (ii). In that case Y would be chargeable to tax in respect of the income of Rs. 5,000.

3. Income of Spouse & Minor Child etc.—Sec. 64.

In computing the total income of any individual, the income of his wife or her husband, as the case may be, and of his or her minor children, is also included in certain circumstances. The provisions regarding the inclusion of the income of the husband/wife or minor child are given below :—

(1) In computing the total income of any individual, there shall be included all such income as arises directly or indirectly :—

(i) to the spouse of such individual from the membership of the spouse in a firm carrying on a business in which such individual is a partner ;

(ii) to a minor child of such individual from the admission of the minor to the benefits of partnership in a firm in which such individual is a partner ;

(iii) subject to the provisions of sec. 27(i), to the spouse of such individual from assets transferred directly or indirectly to the spouse by such individual otherwise than for adequate consideration or in connection with an agreement to live apart ;

(iv) subject to the provisions of sec. 27(i) to a minor child, not being a married daughter of such individual, from assets transferred directly or indirectly to the minor child by such individual otherwise than for adequate consideration ; and

(v) to any person or association of persons from assets transferred otherwise than for adequate consideration to the person or association of persons by such individual to the extent to which the income from such assets is for the immediate or deferred benefit of his or her spouse or minor child (not being a married daughter) or both.

(2) Having known the circumstances in which the income of the spouse or the minor child etc., is to be included in the hands of an individual, it is very necessary to know the individual (i.e., which spouse, the husband or the wife ?) in whose hands it is to be included. For this purpose the Explanation to sec. 64 provides that for the purpose of (i) above, the individual in computing whose total income the income referred to in that clause is to be included shall be that husband or the wife whose total income (excluding the income referred to in that clause), is greater ; and for the purpose of clause (ii) where both the parents are members of the firm in which the minor child is a partner, the income of the minor child from the partnership shall be included in the income of that parent whose total income (excluding the income referred to in that clause) is greater. Where any such income is once included in the total income of either spouse or parent, any such income arising in any succeeding year shall not be included in the total income of the other spouse or parent

unless the I.T.O. is satisfied, after giving that spouse or parent an opportunity of being heard, that it is necessary so to do. These provisions are illustrated in Problem No. 47.

4. Liability of persons in respect of income included in the income of another person—Sec. 65.

Where the income from any asset or from membership of a firm of a person other than the assessee is included in the total income of the assessee, the person in whose name such asset stands or who is a member of the firm shall be liable, on the service of notice of demand by the Income-tax Officer in this behalf, to pay that portion of the tax levied on the assessee which is attributable to the income so included. Where any such asset is held jointly by more than one person, they shall be jointly and severally liable to pay the tax which is attributable to the income from the assets so included.

PROBLEM No. 47.

The following are the particulars of income of Mr. R & Mrs. R for the assessment year 1968-69 :—

	Mr. R.	Mrs. R.
	(Amount in Rs.)	
(1) Share from a registered firm in which Mr. R & Mrs. R are equal partners	10,000	10,000
(2) Interest on securities	2,000	...
(3) Income from dividends (gross)	5,000	6,000
(4) Income from house property	1,000	6,000
	18,000	22,000

Compute the tax liabilities of Mr. R & Mrs. R respectively for the A.Y. 1968-69.

SOLUTION.

Computation of the tax liabilities of Mr. R. & Mrs. R for the assessment year 1968-69.

		Mr. R.	Mrs. R.
		Rs.	Rs.
(1)	Interest on securities	2,000	
(2)	Income from dividends	5,000	6,000
(3)	Income from house property	1,000	6,000
		8,000	12,000
(4)	Share from registered firm of Mr. R & Mrs. R added in the total income of Mrs. R u/s 64 as her income excluding share from the regd. firm is more than that of Mr. R.	....	20,000
	TOTAL INCOME	Rs. 8,000	32,000

B. Cash Credits & Unexplained Investments etc.

5. Cash Credits—Sec. 68.

Where any sum is found credited in the books of assessee maintained for any previous year, and assessee offers no explanation about the nature and source thereof or the explanation offered by him is not in the opinion of the Income-tax Officer satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.

6. Unexplained Investments—Sec. 69.

Where in the financial year immediately preceding the assessment year the assessee has made the investments which are not recorded in the books of accounts, if any, maintained by him for any source of income and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the I.T.O. satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.

unless the I.T.O. is satisfied, after giving that spouse or parent an opportunity of being heard, that it is necessary so to do. These provisions are illustrated in Problem No. 47.

4. Liability of persons in respect of income included in the income of another person—Sec. 65.

Where the income from any asset or from membership of a firm of a person other than the assessee is included in the total income of the assessee, the person in whose name such asset stands or who is a member of the firm shall be liable, on the service of notice of demand by the Income-tax Officer in this behalf, to pay that portion of the tax levied on the assessee which is attributable to the income so included. Where any such asset is held jointly by more than one person, they shall be jointly and severally liable to pay the tax which is attributable to the income from the assets so included.

PROBLEM No. 47.

The following are the particulars of income of Mr. R & Mrs. R for the assessment year 1968-69 :—

	Mr. R.	Mrs. R.
	(Amount in Rs.)	
(1) Share from a registered firm in which Mr. R & Mrs. R are equal partners	10,000	10,000
(2) Interest on securities	2,000	...
(3) Income from dividends (gross)	5,000	6,000
(4) Income from house property	1,000	6,000
	18,000	22,000

Compute the tax liabilities of Mr. R & Mrs. R respectively for the A.Y. 1968-69.

SOLUTION.

Computation of the tax liabilities of Mr. R. & Mrs. R for the assessment year 1968-69.

		Mr. R.	Mrs. R.
		Rs.	Rs.
(1)	Interest on securities	2,000	
(2)	Income from dividends	5,000	6,000
(3)	Income from house property	1,000	6,000
		8,000	12,000
(4)	Share from registered firm of Mr. R & Mrs. R added in the total income of Mrs. R u/s 64 as her income excluding share from the regd. firm is more than that of Mr. R.	....	20,000
	TOTAL INCOME	Rs. 8,000	32,000

B. Cash Credits & Unexplained Investments etc.

5. Cash Credits—Sec. 68.

Where any sum is found credited in the books of assessee maintained for any previous year, and assessee offers no explanation about the nature and source thereof or the explanation offered by him is not in the opinion of the Income-tax Officer satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.

6. Unexplained Investments—Sec. 69.

Where in the financial year immediately preceding the assessment year the assessee has made the investments which are not recorded in the books of accounts, if any, maintained by him for any source of income and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the I.T.O. satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.

7. Unexplained money etc.—Sec. 69A.

This is a new provision inserted by the Finance Act, 1964. Where, in any financial year the assessee is found to be the owner of any money, bullion, jewellery, or other valuable articles and such money etc., is not recorded in the books of account, if any maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquistion of the money etc., or the explanation offered by him is not in the opinion of the I.T.O. satisfactory, the money and the value of the bullion etc., may be deemed to be the income of the assessee for such financial year.

8. Not fully disclosed investments etc.—Sec. 69B.

The Finance Act, 1965 has inserted a new section 69 B in the I. T. Act. The effect of this amendment is that where in any financial year, the assessee has made any investment or is found to be the owner of any bullion, jewellery or other valuable article and the I. T. O. finds that the amount expended on making such investment or in acquiring such bullion etc., exceeds the amount recorded in this behalf in the books of account maintained by the assessee for any source of income, the excess amount may be deemed to be the income of the assessee for such financial year unless he is able to offer satisfactory explanation for the same.

PROBLEM No. 48.

Mr. R who keeps regular books of account according to the calendar year returned an income of Rs. 14,000 for the A.Y. 1968-69. During the course of assessment proceedings the I.T.O. noticed the following entry in Cash Book.

"July 25, 1967—Received cash from Mr. Manmal... Rs. 10,000."

The explanation for this entry given by Mr. R was found to be unsatisfactory by the I.T.O. Further the I.T.O. noted that he also invested Rs. 25,000 in Government securities on 13.9.67 and that the sum was not spent out of the books.

When asked to explain, Mr. R simply stated : "On the death of my grandfather in the month of August, 1967, I received Rs. 25,000 which I invested in Govt., securities. I am unable to produce any documentary evidence or other proof except this." The I. T. O. considered this explanation as unsatisfactory. Discuss the liability of Mr. R. for the A. Y. 1968-69.

SOLUTION.

Tax liability of Mr. R for the assessment year 1968-69.

		Rs.
Income as per return filed		14,000
Add :		
Cash credits in the name of Mr. Manmal not satisfactorily explained, added u/s 68 ...		10,000
Unexplained investment : Purchase of Govt. securities not satisfactorily explained, added u/s 69		25,000
Total Income	Rs.	49,000

C. Set off or carry forward and set off of losses.— Sections 70 to 79.

9. Set off of losses :—

The following are the main provisions re : the set off of losses :—

(i) A loss sustained by an assessee from one source of income can be set off against another source under the same head of income in the same year.—Sec. 70.

(ii) A loss sustained by an assessee under any head of income (excepting 'capital gains') can be set off against his income under any other head of income. However, if the assessee so desires, any such loss may not be set off against his income under the head 'capital gains' relating to short-term capital assets as well as other capital assets but may be set off against his income assessable under any other head of income.—Sec. 71.

The Finance (No. 2) Act, 1967 has amended Sec. 71 to provide that w. e. f. A. Y. 1968-69 Short-term capital loss may also be set off against any other income.

(iii) Any loss computed in respect of a **speculation business** carried on by the assessee, shall not be set off except against profits and gains, if any, of another speculation business in the same year.

Thus it becomes clear that speculation losses can be set off against speculation profits only.—Sec. 73.

(iv) An unregistered firm including a firm which has not been assessed as a registered firm u/s 183 (b) alone is entitled to set off any loss against its own income only. The partner of the unregistered firm, whether the firm is already assessed or not, is not entitled to set off the losses from the unregistered firm against his own income in any case. —Sec. 77.

10. Carry forward of business losses.—Sec. 72 & 73.

If a business loss cannot be wholly set off against other income in the same year, it can be carried forward and set off against the profits of any business for eight succeeding assessment years, provided the same business in which the loss was incurred is continued by the assessee. Speculation losses can be carried forward and set off only against speculation profits for eight succeeding assessment years. However, where unabsorbed depreciation or expenditure on scientific research is also in existence, the business or speculation loss carried forward should be set off in priority to the setting off of such unabsorbed depreciation or scientific research expenditure.

11. Carry forward of losses under the head "Capital gains" —Sec. 74.

For a detailed discussion please refer to para 7 of Chapter IX.

12. Carry forward of losses by Firms.—Sec. 75 to 78.

A registered firm or an unregistered firm assessed u/s 183 (b) as a registered firm has no right to carry forward its loss for set-off. Such a right is enjoyed only by its members. An unregistered firm is entitled to carry forward its loss for set off against its other income as per para 8 above. For greater details, please refer to Chapter XV dealing with the "Assessment of Firms."

13. Carry forward of Losses in case of certain companies —Sec. 79.

Please refer to para 5 of Chapter XVI dealing with the "Assessment of Companies".

N. B.—It may be noted that except business losses & losses under the head "Capital Gains", no other type of loss can be carried forward for set off in the succeeding assessment year.

Questions

Q. 1. Explain the provisions regarding cash credits and unexplained investments and money.

Ans. See paras 5, 6 and 7.

Q. 2. Write an essay on set off or carry forward & set off of losses.

Ans. See paras 9 to 13.

Q. 3. State the circumstances under which the income of the minor child or wife is included in the hands of an individual.

Ans. See para 3.

Chapter XII

DEDUCTIONS IN COMPUTING TOTAL INCOME

1. Introductory.

The gross total income under different heads of income after set off of losses etc., (as computed in the manner described in Chapters V to XI) has further to be decreased by certain deductions newly introduced by the Finance Act, 1965 by inserting a new Chapter VI A in the I.T. Act, and further enlarged by the Finance (No. 2) Act, 1967 and Finance Act, 1968. Some of the new deductions were formerly eligible to rebate at an average rate of income-tax and/or super-tax. It may be mentioned here that the total income arrived at after making the deductions described in the following paragraphs has further to be reduced by the amount of annuity deposit, if any, payable by an "individual" assessee to arrive at the total income liable to tax. The deductions for A. Y. 1968-69 and A. Y. 1969-70 are described below.

I. Deductions for A.Y. 1968-69.

2. New Chapter VIA in the I.T. Act :

The Third Schedule of the Finance (No. 2) Act, 1967 has w.e.f. the A.Y. 1968-69 substituted the entire chapter VI A of the I T. Act, 1961 relating to the deductions to be made in computing total income, by a new and enlarged chapter. The new Chapter VI A seeks, *inter alia,* to replace the existing provisions for grant of full or partial rebate of tax at the average rate of tax or charging of tax at a concessional rate on certain items of income or payments, contained in chapters VII, VIII and XII of I.T. Act, by provisions for allowing a straight deduction of the whole or a specified percentage of the amount qualifying for the rebate or concessional rate of tax, in computing the total income. The provisions of sections 80A to 80F of the

earlier chapter VIA also find a place in the new chapter with certain modifications. It also incorporates certain new provisions. (i) It has been made clear in the new sec. 80A(2) that the aggregate of these deductions cannot exceed the gross total income of the assessee. The new section 80A(3) provides that where a deduction has been allowed under new sections 80G, 80H, 80J, 80K, 80L, 80S, or 80T (described later) in computing the total income of a firm, A.O.P. or body of individuals, no deduction under the same section shall be allowed in computing the total income of a partner of the firm or a member of the association or body, in relation to his share in the income of the firm, association or body.

New section 80B contains definitions of certain terms used in this new chapter VIA. The term "gross total income" u/s. 80B (5) means the total income computed in accordance with the provisions of the I.T. Act before making any deduction under chapter VIA or u/s 280-O and without applying the provisions of section 64 (i.e., relating to the inclusion of spouse or minor child etc.). The various deductions are described below :—

(i) Deduction in respect of life insurance premia, annuities and contributions to provident fund etc.—New Sec. 80C.

3. In computing the total income of an assessee, an amount equal to 60% of the first Rs. 5,000 of the aggregate of the following sums and 50% of the balance, if any, of such sums shall be deducted :—

(a) In the case of an *individual,* any sums paid in the previous year out of his income chargeable to tax—

(i) to effect or to keep in force an insurance on the life of the assessee or on the life of the wife or husband of the assessee, or

(ii) to effect or to keep in force a contract for deferred annuity on the life of the assessee or on the life of the wife or husband of the assessee, notwithstanding that such contract contains a provision for the exercise

by the insured of an option to receive a cash payment in lieu of the annuity (amended by the Finance Act, 1966), or

(iii) as a contribution to any provident fund to which the P. F. Act, 1925 applies.

(b) In the case of an *H. U. F.*, a sum paid in the previous year by the assessee out of its income chargeable to tax to effect or to keep in force an insurance on the life of any male member of the family or of the wife of any such member.

Note : The amount of premium or other payment made on a policy (other than a contract for deferred annuity) should not exceed 10% of the actual capital sum assured.

(c) Any sum deducted in the previous year from the Salary payable by on behalf of the Government to any individual for the purpose of securing to him a deferred annuity or for making provision for his wife or children, not exceeding 1/5th of the salary.

(d) Contribution to a recognised provident fund by the employee (and not the employer) only as not to exceed 1/5th of the salary (defined in rule 2 (h) of part A of IV Schedule) or Rs. 8,000, whichever is less.

(e) Contributions by an employee to an approved superannuation fund.

(f) Where the assessee is an *individul* any sums deposited by him out of his chargeable income in a 10-year or 15-year account under the P.O.S.B. (Cumulative Time Deposits) Rules, 1959.

Maximum sum qualifying for deduction :—

The aggregate of the above six sums which qualifies for the purposes of computing the deduction will not exceed—

(a) The lesser of the following two amounts in the case of an *individual being an author, playwright, artist, musician or actor* (as laid down in Rule 21 of the I.T. Rules, 1962) :—

(i) an amount equal to the aggregate of $33\frac{1}{3}\%$ of the income from such profession included in his total income and 30% of the remaining part of the total income ; or

(ii) a maximum of Rs. 20,000. The above deduction is available only when such an individual has effected an insurance prior to 1.3.64 and has paid any sum in the previous year to keep in force such insurance ;

(b) 30% of the gross total income or Rs. 15,000 (increased from Rs. 12,500 by the Finance (No. 2) Act, 1967), whichever is less, in the case of any other *individual* ; and

(c) 30% of the gross total income or Rs. 30,000 (increased from Rs. 25,000 by the Finance (No. 2) Act, 1967), whichever is less, in the case of a Hindu Undivided Family.

(ii) Deduction in respect of medical treatment etc. of handicapped persons—New Sec. 80D.

4. A sum of Rs. 2,400 for institutional treatment in a medical institution, hospital or nursing home etc. for 182 days or more during the previous year and Rs. 600 in other cases of treatment of one handicapped dependent only (as reduced by the income of such dependent) will be allowed as a deduction in the case of a resident individual ro H. U. F.

(iii) Relief relating to payment for securing retirement annuity—New Sec. 80E.

5. Any Indian resident citizen who is a partner of a registered firm rendering professional service as Chartered Accountant, Solicitor, lawyer, architect or any other notified professional service will be entitled to deduct premiums or contributions on approved annuity contracts or funds upto a maximum of 10% of the gross total income or Rs. 5,000 whichever is less, provided his unearned income included in total income does not exceed Rs. 10,000. The annuity when received will be treated as earned income to the extent to which it is attributable to the amount of deduction allowed under this section, and charged to tax accordingly.

The approval of annuity contracts and funds will be given by the Commissioner subject to certain rules and conditions.

PROBLEM No. 49.

Mr. A's income from property u/s 22 is Rs. 60,000. He has paid Rs. 16,000 L.I.P. on his own life. State the deduction that will be allowed to him in respect of L.I.P. u/s 80C for the A. Y. 1968-69. How will the total income be computed ?

SOLUTION.

The eligible amount of L. I. P. for deduction u/s 80C for the A. Y. 1968-69 is limited to 30% of total income i.e., Rs. 18,000 or Rs. 15,000, whichever is less. Hence, Mr. A will be entitled to a deduction in computing the total income in respect of L.I.P. of Rs. 15,000 calculated as follows :—

		Rs.
On the first Rs. 5,000 @ 60%	...	3,000
,, next Rs. 10,000 @ 50%	...	5,000
Admissible deduction for L.I.P. u/s 80C		8,000

The total income for the A. Y. 1968-69 will be computed as under :

		Rs
Income from property u/s 22	...	60,000
Less : Deduction for L.I.P. u/s 80C	...	8,000
		52,000
Less : Annuity Deposit @ 12%		6,240
Total income chargeable to tax	...	45,760

PROBLEM No. 50.

Mr. B's income from business is Rs. 25,000. He paid Rs. 2,500 as L.I.P. on his life the sum assured being Rs. 20,000 and Rs. 800 as L.I.P. on his wife's life, the sum assured being Rs. 10,000. State the amount to be deducted in respect of the L.I.P. in computing his total income for the A.Y. 1968-69.

SOLUTION.

The L.I.P. should not exceed 10% of the sum assured. Hence the eligible amount of L.I.P. for deduction is as under :

	Rs.
L.I.P. on his own life @ 10% × 20,000	2,000
L.I.P. on his wife's life	800
	2,800

He will be entitled to a deduction of 60% of Rs. 2,800= Rs. 1,680 in respect of the L.I.P. paid in computing his total income for the A.Y. 1968-69.

PROBLEM No. 51.

Mr. C, whose gross income from interest for the A.Y. 1968-69 amounts to Rs. 10,000 pays on L.I.P. of Rs. 500 on the life of his son.. State the deduction to be allowed to him in respect of the L.I.P. for the A.Y. 1968-69.

SOLUTION.

Mr. C is not entitled to any deduction u/s 80C for the A.Y. 1968-69 in respect of the L.I.P. paid on his son's life.

PROBLEM No. 52.

Mr. D, whose income from business is Rs. 40,000, spent Rs. 3,000 on the medical treatment of his one handicapped child in a nursing home (for 200 days). He has paid Rs. 10,000 as L.I.P. on his own life and has deposited Rs. 2,400 in a 10 year P. O. S. B. (Cumulative Time Deposit) A/c. Compute his total income after making the deductions u/ss 80C & 80D for the A. Y. 1968-69.

SOLUTION.

Under section 80C the maximum amount eligible for deduction in respect of the L.I.P. (Rs. 10,000) and P.O.S.B. (C.T.D.) a/c deposits (Rs. 2,400) taken together (Rs. 12,400) is limited to 30% of gross total income, viz., Rs. 12,000. Under sec. 80D the maximum amount of deduction in respect of treatment of handicapped child is Rs. 2,400. The total income of Mr. D for the A.Y. 1968-69 will, therefore, be computed as under :—

		Rs.	Rs.
Income from business ...			40,000
Less : (i)	Deduction for L.I.P. u/s 80C :		
	On the first Rs. 5,000 @ 60%	3,000	
	On the next Rs. 7,000 @ 50%	3,500	6,500
(ii)	Deduction for medical treatment of handicapped child u/s 80D		2,400 8,900
	Gross Total Income ...		31,100
	Less : Annuity Deposit @ 9% ...		2,800
	Total income		28,300

PROBLEM No. 53.

Mr. E, whose total income is Rs. 36,000 has paid Rs. 8,000 on a contract for a deferred annuity on his own life of Rs. 30,000. State the deduction to be made u/s 80C in computing his total income for the A.Y. 1968-69.

SOLUTION.

The condition that the L.I.P. should not exceed 10% of the sum assured does not apply to payments made on a contract

for a deferred annuity as per sec. 80C (3). Mr. E will be entitled to the following deduction u/s 80C in computing his total income for the A.Y. 1968-69 :—

	Rs.
On the first Rs. 5,000 @ 60%	3,000
,, next Rs. 3,000 @ 50%	1,500
Deductible allowance u/s 80C	4,500

PROBLEM No. 54.

Mr. F pays Rs. 2,000 as L.I.P. on his own life out of agricultural Income of Rs. 20,000. State the deduction admissible to him u/s 80C for the A. Y. 1968-69.

SOLUTION.

Mr. F will not be entitled to any deduction u/s 80C in respect of the L.I.P. as the same has been paid out of agricultural income which is not chargeable to tax under the I.T. Act, 1961.

PROBLEM No. 55.

Mr. G is employed at a monthly salary of Rs. 3,000. He has contributed 10% of his salary to a recognised provident fund. He paid Rs. 6,000 as L.I.P. on his own life & deposited Rs. 3,000 in a 15-year P.O.S.B. (C.T.D.) A/c.

Compute the total income for the A.Y. 1968-69.

SOLUTION.

Computation of total income for the A.Y. 1968-69.

	Rs.
Salary for 12 months @ Rs 3,000 p. m.	36,000
Less : Deduction for P.F. Contribution (3,600), L.I.P. (6,000) and P.O.S.B. (C.T.D.) a/c deposits (3,000), limited to 30% of Rs. 36,000, viz., Rs. 10,800 as under :—	

On the first Rs. 5,000 @ 60%	3,000	
,, next Rs. 5,800 @ 50%	2,900	5,900
Adjusted total income		30,100
Less : Annuity deposit @ 9%		2,710
		27,390

PROBLEM No. 56.

Mr. H is employed on a monthly salary of Rs. 2,500. He is contributing 24% of his salary as his own share to a recognised provident fund to which his employer is contributing 10%. He has paid Rs. 4,000 as L.I.P. on his own life. State the deduction to be made u/s 80C in computing his total income for the A.Y. 1968-69.

SOLUTION.

The eligible amount of contribution to a R.P.F. is only 20% of the salary, viz., Rs 30,000 × 20% = Rs. 6,000 and not Rs. 7,200 actually paid by him. The aforesaid sum of Rs. 6,000 together with the L.I.P. of Rs. 4,000 should not further exceed 30% of total income viz., 30% × 30,000 = 9,000. Therefore, Mr. H will be entitled to a deduction on Rs. 9,000 calculated as under :—

	Rs.
On the first Rs. 5,000 @ 60%	3,000
,, next Rs. 4,000 @ 50%	2,000
Total deduction to be made u/s 80C	5,000

PROBLEM No. 57.

A Hindu undivided family, whose business income is Rs. 2,00,000, paid L.I.P. of Rs. 36,000 on the lives of its three adult male members. State the deduction admissible to it u/s 80C and compute its total income for the A.Y. 1968-69.

SOLUTION.

Computation of the total income of the HUF for the A.Y. 1968-69 :—

		Rs.
Business income u/s 28		2,00,000
Less : Deduction u/s 80C : (The maximum amount of L.I.P. eligible for deduction is Rs. 30,000)		
Hence on the first Rs. 5,000 @ 60%	3,000	
„ „ next Rs. 25,000 @ 50%	12,500	15,500
Adjusted total income		1,84,500
Less : Annuity Deposit @ 15%		27,680
Total income		1,56,820

(iv) Deduction in respect of educational expenses in certain cases—new sec. 80F.

6. It provides for the deduction of a specified amount in the cases a resident individual who is not a citizen of India, where such individual has incurred out of income chargeable to tax, any expenditure on the full time education of a dependent child of 21 years or under in a university, college or school or other educational institution outside India. The specified amounts are Rs. 1,500 for each such child subject to a maximum of Rs. 3,000 in respect of two or more such children. This replaces the old provision in sec. 87A.

(v) Deduction in respect of donations to certain funds, charitable institutions, etc.—new sec. 80G.

7. It replaces the earlier section 88 of the I.T. Act. It provides for a straight deduction of 50% of the qualifying amount of donations (i.e., minimum Rs. 250 and normally a maximum of 10% of gross total income or Rs. 2 lakhs, whichever is less) in computing the total income of a company. In the case of all other assessees the deduction is 55%.

Deduction is allowed in respect of any sum paid by him (i) as donations to the National Defence Fund set up by the Central Government, or (ii) as donation to the Jawaharlal Nehru Memorial Fund (inserted by the Direct Taxes Amend-

ment Act, 1964), or (iii) Prime Minister's Drought Relief Fund [as inserted by Finance (No. 2) Act, 1967] or (iv) as donations to any institution or fund established in India for a charitable purpose (excluding any purpose the whole or substantially the whole of which is of a religious nature— added by the Finance (No. 2) Act, 1965) or (v) as donations to the Government or to any local authority made on or after 1-4-60 to be utilised for any charitable purpose, or (vi) any donations given for any temple, mosque, gurdwara, church or other place which is notified by the Central Government in the Official Gazette to be of historic, archœological or artistic importance or to be a place of public worship of renown throughout any state or states.

(2) The deduction is admissible only when the aggregate amount of donations paid (a) is not less than Rs. 250 and (b) except in the case of donations to the National Defence Fund or Jawaharlal Nehru Memorial Fund or P. M. D. R. Fund is not more than Rs. 200,000/-(Rs. 5 lakhs in case of donations to public temples etc) or 10% of the gross total income of the assessee (as reduced by any other sum on which income-tax is not payable under the I. T. Act, and any sum entitled to deduction u/ss 80C to 80T i.e., under chapter VI A of I. T. Act.), which ever is less.

The institution or fund as referred to in clause (iv) of sub-para (1) above established in India for a charitable purpose must fulfill the following conditions :—

(a) Its income is exempt u/s 10 (22), 11 or 12 ;

(b) There is no provision in the Rules for the transfer or application at any time of the whole or any part of the income or assets for non-charitable purposes ;

(c) It is not expressed to be for the benefit of any porticular religious community or caste ;

(d) It maintains regular accounts of its receipts and expenditure ; and

(e) It is constituted as a public charitable trust or is registered under the Societies Registration Act, 1860 or under any law corresponding to that in force in any part of India or under section 25 of the Companies Act, 1956, or is a university established by law or is any other educational institution recognised by the Government or by a university established by law, or affiliated to any university established by law or is an institution financed wholly or in part by the Government or local authority.

PROBLEM No. 58.

Indicate the extent of admissibility of deduction under new Sec. 80G in the following cases :—

(a) Mr. A whose property income is Rs. 15,000 pays an L. I. P. of Rs. 2,000 and donations to a charitable institution of Rs. 3,000.

(b) Mr. B pays a donation to a charity trust amounting to Rs. 140.

(c) Mr. C whose total income is Rs. 3,50,000, pays a donation of Rs. 30,000 to a charitable institution.

(d) Mr. D whose total income is Rs. 50,00,000 pays a sum of Rs. 4,00,000 to an institution exempt u/s 80G.

(e) Mr. E whose total income is Rs. 30,000, pays a sum of Rs. 5,000 to National Defence Fund and Rs. 4,000 to another charity fund exempt u/s 80G.

(f) Mr. F whose total income is Rs. 32,000, pays a sum of Rs. 600 to the Central Govt., for flood relief.

(g) M/s G. & Co. Ltd., whose total income is Rs. 50,00,000 pays a sum of Rs. 3,00,000 to the National Defence Fund and Rs. 4,00,000 to an institution exempt u/s 80G.

SOLUTION

Assuming that all the problems pertain to the assessment year 1968-69, the answers are as follows :—

(a) Mr. A will be entitled to a deduction in respect of donations to a charitable institution to the maximum extent of 10% of total income i.e., 10% of Rs. 13,800 (15,000—60% of Rs. 2,000 i.e., 1,200). The amount of deduction=55% of 1,380=Rs. 759.

(b) Mr. B is not entitled to any deduction as the sum donated by him is less than Rs. 250, the minimum sum prescribed for obtaining deduction.

(c) Mr. C will be entitled to deduction @ 55% on Rs. 30,000 i.e., 16,500.

(d) Mr. D is entitled to deduction on a maximun sum of Rs. 2,00,000 only i.e., 1,10,000.

(e) Mr. E is entitled to deduction on the full sum of Rs. 5,000 paid to the National Defence Fund and in addition on a sum upto 10% of the gross total income, i. e., Rs. 3,000 (10%x30,000) i.e., Rs. 8,000 @ 55%= Rs. 4,400.

(f) Mr. F is entitled to deduction @ 55% on the full sum of Rs. 600 paid to thc Central Govt. for flood relief as the sum in question is less than 10% of the gross total income.

(g) M/r. G & Co. Ltd. is entitled to deduction @ 50% only on a sum of Rs. 3,00,000 paid to the National Defence Fund and in addition on a sum Rs. 2,00,000 (the maximum sum allowed u/s 88G) paid to an institution exempted u/s 88G i.e., for sum of Rs. 2,50,000.

(vi) Deduction in case of new industrial undertakings employing displaced persons etc.—new sec. 80H

8. Where the "gross total income" of any assessee includes any profits and gains derived from a new industrial undertaking which satisfies all the conditions laid down in that section (as described below), deduction will be allowed of a sum equal to 50% of the amount of such profits and gains or Rs. 1 lakh, whichever is lower. This deduction will be

allowed in respect of the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce articles, and the 9 assessment years, immediately succeeding. The new industrial undertaking should fulfil all the following conditions :—

(a) it is not formed by the splitting up or reconstruction of a business already in existence ;

(b) it is not formed by the transfer to a new business of a building, machinery or plant previously used for any purpose ;

(c) it has begun or begins to manufacture or produce articles in any part of India at any time within the period of three years next following the 1st April, 1967 ;

(d) it employs, on every working day throughout the previous year, forty or more workers in a manufacturing process (whether carried on with or without the aid of power) ;

(e) it employs displaced persons or repatriates or members of the families of displaced persons or repatriates, and the daily average number of such employees, as certified by the prescribed authority, is not less than sixty per cent. of the daily average of all the persons employed in the undertaking throughout the previous year.

(vii) Deduction in respect of profits and gains of priority industries—new sec. 80 I.

9. The Finance Act, 1966 had introduced a new section 80E (now S. 80I) in the I. T. Act. In computing the total income of an Indian company or any other company which has made the prescribed arrangements for the declaration and payment of dividends within India, a deduction will be allowed of a sum equal to 8% of the amount of profits and gains attributable to the business of hotel or of generation or distribution of electricity or any other form of power or of construction, manufacture or production of any one or more of the articles or things specified in the list in the 5th Schedule to the Act included in its total income as computed

under the other provisions of the I.T. Act. This deduction is not available in the case of a company in which the public are substantially interested and whose total income (as computed without applying the provisions of sec. 80I) does not exceed Rs. 50,000. This is because the rate of I. T. in the case of such companies is only 45% as against the rate of 55% applicable in the case of other companies.

(viii) Deduction in respect of profits and gains of new industrial undertakings etc.—new sec. 80J.

10. It replaces the earlier section 84 with the following main changes :—

(a) Where the gross total income of an assessee includes any profits and gains from an industrial undertaking or ship or the business of a hotel to which the section applies, such profits and gains upto 6% p.a. of the capital employed therein will be allowed as a straight deduction (in contrast with the existing provision of a rebate on an average rate). The amount of capital employed is to be computed as per Rule 19 or 19A of the I.T. Rules, 1962.

(b) It further provides for the carry forward of any deficiency in the "tax holiday" benefit from the A.Y. 1967-68 onwards to the subsequent year for being allowed as a straight deduction in computing the total income of the assessee for such subsequent years. Such carry forward is to be allowed upto the 8th assessment year commencing with the first assessment year eligible for exemption.

(c) Where the industrial undertaking is also entitled to the deduction u/s 80H or u/s 80I, the deduction u/s 80J will be allowed with reference to such profits remaining after the deductions u/s 80H and 80I.

(d) The period of deduction in different types of cases is given below—(i) The assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce articles or operate a cold storage plant or use a ship

and four assessment years immediately succeeding i.e., in all five years. In the case of co-operative society the total period is seven years.

(ii) The assessment for the financial year next following the previous years in which the hotel starts functioning and the 4 assessments immediately succeeding i.e., in all 5 years.

(e) In order to get deduction the **industrial undertaking** must fulfil all the following conditions :—

(i) It is not formed by the splitting up or the reconstruction of a business already in existence. There is an exception in the case damaged industries getting concession u/s 33B.

(ii) It is not formed by the transfer to a new business of a building, machinery or plant previously used for any purpose.

(iii) It has begun or begins to manufacture or produce articles in any part of India at any time within a period of 23 years from 1-4-1948.

(iv) It employs ten or more workers in a manufacturing process carried on with the aid of power, or employs 20 or more workers in a manufacturing process carried on without the aid of power.

(f) In order to get deduction the **hotel** must fulfil all the following conditions :—

(i) It starts functioning on or after 1-4-61, and is not formed by the splitting up or the reconstruction of a business already in existence or by the transfer to a new business of building, machinery or plant previously used as a hotel.

(ii) It is owned and run by a company registered in India with a paid-up capital of not less than Rs. 5 lakhs.

(iii) It is run in premises whether owned or not by the company, as amended by the Finance (No. 2) Act, 1967.

(iv) It has such number and types of guest rooms and provides such amenities as may be prescribed, having regard to

the population and the tourist importance of the place in which the hotel is located.

(v) It is for the time being approved for this purpose by the Central Government.

PROBLEM No. 59.

A new industrial undertaking which started operating a cold storage plant w.e.f. 1.6.63, showed a gross total income of Rs. 2,00,000 for the accounting year ended on 31.3.68 relevant to the A.Y. 1968-69. The capital employed by it worked out to Rs. 60,00,000.

It has not been able to absorb the full benefit of tax holiday u/s 84 for assessment years 1964-65 to 1967-68 amounting to Rs. 20,000 for each of the years. Indicate the tax concession available to the deficiency in the "tax holiday" benefit for the A.Y. 1968-69.

SOLUTION.

(a) Under the provisions of section 84 of the I.T. Act, 1961 the new industrial undertaking is not entitled to any carry forward of the deficiency in the "tax holiday" benefit for any of the assessment years 1964-65 to 1966-67.

(b) Under the new section 80J, the deficiency in "tax holiday" benefit for the A.Y. 1968-69 is calculated as under :—

	Rs.
Tax holiday benefit @ 6% on Rs. 60,00,000 capital employed	3,60,000
Less : Actual profit	2,00,000
Deficiency in "Tax holiday" benefit for A.Y. 1968-69	1,60,000
Add : Deficiency for the A.Y. 1967-68 carried forward	20,000
Total	1,80,000

It will be allowed to be carried forward for set off against the profits of A.Y. 1969-70, 1970-71 and 1971-72 only (i.e., 8 years beginning from the first year of exemption u/s 84).

(ix) Deduction in respect of dividends from exempted industrial undertaking, etc.—new sec. 80K.

11. It replaces the earlier sec. 85. The entire amount of dividends attributable to the "tax holiday" profits of a company u/s 80J will be allowed as a deduction in computing the total income of the recipient.

(x) Deduction in respect of dividends in certain cases—new sec. 80L.

12. Where in the case of any assessee, the income by way of dividends from Indian companies included in his gross total income does not exceed Rs. 500, the entire dividend income will be allowed as a deduction in computing his total income.

(xi) Deduction in respect of certain inter-corporate dividends—new sec. 80M.

13. It replaces the earlier sec. 85A. Where the gross total income of a company includes income by way of dividends from a domestic company, a specified percentage of such dividends, as stated below, will be allowed as a straight deduction in computing its total income :

(a)	Dividends received by a foreign Co. from a closely-held Indian Co. mainly engaged in specified priority industries ...	80%
(b)	Dividends received by a foreign Co. from any other domestic Co. ...	65%
(c)	Dividends received by any domestic Co. from any other domestic Co. ...	60%

Note : The deduction u/s 80M will be allowed with reference to the dividends as reduced by the deductions u/ss 80K and 80L.

(xii) Deduction in respect of dividends received from certain foreign companies.—new sec. 80 N.

14. It replaces the earlier sec. 85B. For the A.Y. 1968-69 60% of dividends received from a foreign company on shares in

it allotted to the Indian company for supply of technical know-how or technical services will be allowed as a straight deduction in computing the total income of the Indian company.

(xiii) Deduction in respect of royalties, etc. from certain foreign companies—new sec. 80-O.

15. It replaces the earlier section 85C. For the A.Y. 1968-69 60% of royalty, commission, fees etc. received by an Indian company from a foreign company in consideration of supply of technical know-how or technical services will be allowed as a straight tax deduction instead of the rebate at an average rate.

(xiv) Deduction in respect of income of co-operative societies —new sec. 80 P.

16. It replaces the earlier sec. 81. The amount of certain categories of income of co-operative societies which at persent qualify for rebate of tax will be allowed as a straight deduction in computing the income of the co-operative society.

(2) The sums referred to above are the following, namely :—

(a) in the case of a co-operative society engaged in—

(i) carrying on the business of banking or providing credit facilities to its members, or

(ii) a cottage industry, or

(iii) the marketing of the agricultural produce of its members, or

(iv) the purchase of agricultural implements, seeds, live-stock or other articles intended for agriculture for the purpose of supplying them to its members, or

(v) the processing, without the aid of power, of the agricultural produce of its members,

the whole of the amount of profits and gains of business attributable to any one or more of such activities ;

(b) in the case of a co-operative society, being a primary society engaged in supplying milk raised by its members to a federal milk co-operative society, the whole of the amount of profits and gains of such business ;

(c) in the case of a co-operative society engaged in activities other than those specified in clause (a) or clause (b) (either independently of or in addition to, all or any of the activities so specified) so much of its profits and gains attributable to such activities as does not exceed fifteen thousand rupees ;

(d) in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income ;

(e) in respect of any income derived by the co-operative society from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities, the whole of such income ;

(f) in the case of a co-operative society, not being a housing society or an urban consumers, society or a society carrying on transport business or a society-engaged in the performance of any manufacturing operations with the aid of power, where the gross total income does not exceed twenty thousand rupees, the amount of any income by way of interest on securities chargeable under section 18 or any income from house property u/s 22.

(xv) Deduction in respect of dividends from co-operative society—new sec. 80Q.

17. It replaces the earlier sec. 82. The whole of dividends received by a member of a co-operative society will be allowed as a straight deduction in computing the total income.

(xvi) Deduction in respect of the remuneration from certain foreign sources in the case of professors etc.—new sec. 80R.

18. The Finance (No. 2) Act, 1967 had, w.e.f. 1.4.1966, introduced a new sec. 80F (now s. 80R) in Chapter VIA of the

I.T. Act. In the case of a resident individual, who is a citizen of India, and who receives remuneration from any foreign university or other educational institution or such other foreign association or body as may be notified in this behalf by the Central Government in the Official Gazettee, for rendering service outside India as a professor, teacher or research worker in such university, institution, association or body, a deduction will be allowed in an amount equal to fifty per cent. of such remuneration in computing his total income. However, if the individual renders continuous service outside India in such university, institution association or body for a period exceeding 36 months, he will not be entitled to the above-mentioned deduction in respect of his foreign remuneration for such service relating to any period after the expiry of the aforesaid 36 months.

(xvii) Deduction in respect of compensation for termination of managing agency etc.—new sec. 80 S.

19. It replaces the earlier sec. 112 relating to the charging of tax at a concessional rate on income by way of compensation for the termination of a managing agency, etc. in the case of non-corporate assessees. Now 25% of such income or Rs. 1,00,000 whichever is less, will be allowed as a straight deduction.

(xviii) Deduction in respect of long-term capital gains—new sec. 80T.

20. It replaces the earlier sec. 114. A straight deduction will be allowed of a specified proportion of the long-term capital gains in the case of non-corporate assessees. The amount of deduction has been explained in ch. IX, para 6.

PROBLEM No. 60.

From the following data, compute the total income of Mr. Z for the year ended on 31.3.1968, relevant to the A.Y. 1968-69 :

1. He derived income from the following sources :—

Income from house property	30,000
Business income	40,000
Dividends	400
Long-term Capital Gains :	
(a) from the sale of a land	6,000
(b) from the sale of shares	1,000

2. He has contributed a sum of Rs. 14,000 only towards L.I.P. on his own life.

3. He has paid donation of Rs. 10,000 to an institution exempt under new section 80G.

SOLUTION.

Computation of the total income of Mr. Z for the Acg. year ended on 31.3.68 i.e., for the A.Y. 1968-1969.

		Rs.
Income from house property		30,000
Business Income		40,000
Dividends		400
Long-term Capital gains :		
(a) From the sale of a land	6,000	
(b) From the sale of shares	1,000	7,000
Gross Total Income :		77,400

Deductions :

(1) In respect of L.I.P. of Rs. 14,000 (Allowed upto 30% of Rs. 77,400) under new sec. 80C :		
@ 60% on the first Rs. 5,000	3,000	
@ 50% „ the next Rs. 9,000	4,500	7,500
(2) In respect of Dividends u/s 80L		400
(3) In respect of long-term capital gains :		
(a) Relating to a land :		
Re : first Rs. 5,000 full sum	5,000	
„ next Rs. 1,000 @ 45%	450	
	5,450	
(b) Relating to Shares : Rs. 1,000 @ 65%	650	6,100
		14,000

(4) In respect of donations u/s 80G : Limited upto 10% of Rs. 77,400—14,000=63,400 i.e., Rs. 6,340 @ 55%.	3,487
Total deductions	17,487
Reduced gross total income (77,400—17,487)	59,910
Less : Annuity deposit @ 12%	7,200
Total Income	52,710

II. Deductions for A.Y. 1969-70.

21. The Finance Act, 1968 has made several amendments to sections 80A to 80T of the I.T. Act and has inserted a new section 80U in the I.T. Act, effective from the A. Y. 1969-70. These are described below :—

(i) Deduction in respect of contributions to Public P. F.—Sec. 80C

22. The deduction u/s 80C (1) will be available to an individual with reference to his contribution in any Government public provident fund.

(ii) Full deduction for dividends upto Rs. 500—Sec. 80L.

23. The amount of Indian company dividends upto Rs. 500 will be deducted in computing the total income in all cases irrespective of the quantum of the dividend income of the assessee.

(iii) Full deduction for dividends from a foreign company—Sec. 80N.

24. As against the existing rate of deduction @ 60%, the full amount of such dividends will be deducted in computing the total income of the Indian company.

(iv) Full deduction for royalties etc. from a foreign company —Sec. 80-O

25. As against the existing rate of deduction @ 60% only, the full amount of such royalties etc. will be deducted in computing the total income of the Indian Company.

(v) Deduction in respect of the income of blind persons— new Sec. 80U

In computing the total income of a resident individual who is totally blind as at the end of the previous year a deduction will be allowed in a sum of Rs. 2,000.

Questions

Q. 1. What are the deductions allowed in computing total income in respect of L.I.P. and P.F. contributions.

Ans. See Para 3.

Q. 2. Write a short note on—(a) Deduction in respect of treatment of handicapped persons ; (b) Relief relating to payment for securing retirement annuities.

Ans. See (a) Para 4 ; (b) Para 5.

PART III

ASSESSMENT OF DIFFERENT ASSESSEES

CHAPTER XIII

ASSESSMENT OF INDIVIDUALS

The following points should carefully be borne in mind :—

(1) Ascertain the class of an individual on the basis of his *residence* during a particular previous year. This is necessary because the incidence of tax depends upon the residence of the assessee.

(2) Ascertain whether he is a member of an HUF or an unregistered firm or a registered firm, or an association of persons or a company or a combination of some or all of them.

(3) See whether any income from settlements or income of spouse and/or minor child is to be included in his total income as per the provisions of Para 1 to 3 of Ch. XI.

(4) Compute his total income (after making the deduction as per chapter XII) to the nearest multiple of Rs. 10 u/s 288A inserted by the Finance Act, 1966 in the manner already explained in Chapters V to XII of Part II of the book.

(5) Deduct the amount of Annuity Deposit (as per details in Ch. XII & Appendix I), wherever applicable, to arrive at the *Reduced Total Income* on which tax has to be calculated.

PROBLEM No. 61.

The following are the particulars of income of an individual for the year ended 31st March, 1968 :—

(a) His salary is Rs. 1,000 p. m. and his T. A. bills for the year amounted to Rs. 2,000, the actual expenditure incurred by him in travelling being Rs. 1,500.

(b) He contributed 10% to a provident fnnd governed by the Provident Funds Act of 1925, his employer contributing 12½%. Interest on his provident fund account for the year amounted to Rs. 1,000.

(c) He owns two houses, one of which is let at Rs. 200 p. m. and the other (whose annual value is Rs. 1,000) cannot actually be occupied by him by reason of the fact that owing to his employment at Nagpur he has to reside at Nagpur itself and the residential home is not actually let and no other benefit therefrom is derived by him. The two houses are subject to local taxes of Rs. 300 and Rs. 120 per year respectively.

(d) He received Rs. 500 interest from tax-free Government securities and Rs. 600 (gross) as dividend.

He is insured and pays an annual premium of Rs. 4,000 on his life policy of Rs. 60,000.

Ascertain his total income and exempted income for the assessment year 1968-69.

SOLUTION.

Computation of total income & exempted income for Assessment Year 1968-69. **(In Rs.)**

1.	Salary for 12 months at the rate of 1,000 p. m.		...	12,000
2.	Interest on tax-free Govt. securities		...	500
3.	Income from property :			
	Rent of house let	... 2,400		
	Less : ½ local tax	... 150		
	Annual value of house let	2,250		
	less : ⅙th for repairs	375		1,875
			C/F	14,375

		B/F	14,375
	The other house is exempt u/s 23(3)		
4.	Dividends (gross) (It is not deductible as it is more than Rs. 500) ...	600	
	Excess T.A. (2000—1500)	500	1,100
	Gross Total Income		15,475
Less :	Deduction u/s 80C :		
	60% of Rs. 4,642 (Eligible sum) :		2,785
(1)	Provident fund contribution	1,200	
(2)	Life Insurance Premia Rs. 4,000 (Both up to 30% of the gross Total Income=30%×15,475=Rs. 4,642)	3,442	
		4,642	
	Total Income		12,630
	Exempted Income (at average rate) :		
	Tax-free interest	500	

PROBLEM No. 62.

Mr. Ram joined M/s New India Publishers, a registered firm as a partner with effect from 1.4.65 and introduced a sum of Rs. 50,000 towards his share of the capital. He had to borrow Rs. 20,000 @ 6% rate of interest for the said purpose. His share from the registered firm came to Rs. 18,000 for the accounting year ended 31.3.68. Compute the total income of Mr. R for the A.Y. 1968-69.

SOLUTION.

Computation of the total income of Mr. Ram for the Assessment Year 1968-69

	Rs.
Share from the registered firm u/s 28	18,000
Less : Interest on borrowed capital at 6% on Rs. 20,000	1,200
Gross Total income Rs. ...	16,800
Less : (Compulsory) Annuity deposit @ 1%	170
Total Income	16,630

PROBLEM No. 63.

An assessee furnishes the following particulars of his income for the previous year ended 31st March, 1968 :—

(a) Salary from X Ltd., an industrial company in India, for eight months=Rs. 24,000.

(b) Salary from X Ltd. for services in Japan for 4 months=Rs. 16,000, out of which Rs. 2,000 p.m. was remitted to his wife resident in Nagpur.

(c) Dividend from a foreign company (after deduction of Rs. 2,000 on account of income-tax in that country) Rs. 4,000, which was not remitted to India.

(d) Share of profit in a registered firm—Rs. 10,000.

(e) A loss of Rs. 6,000 has been brought forward from oil business at Ajmer which yielded Rs. 2,000 as income this year.

Compute his total income for 1968-69 assessment year if he is a (a) resident and ordinarily resident and (b) non-resident.

SOLUTION.

Computation of total income for A.Y. 1968-69 (In Rs.)

			(*a*)	(*b*)
1.	Salary	...	24,000	24,000
2.	Business income	12,000		
	Less : Loss brought forward from oil business at Ajmer	6,000	6,000	6,000
3.	Foreign income whether remitted to India or not :			
	Salary for service in Japan ...	16,000		
	Dividends ...	4,000		
		20,000	20,000	—
	Total income...		50,000	30,000

PROBLEM No. 64.

The following are the particulars of the income of Mr. X, a University Reader :—

(a) He was employed on 1st June, 1966, in the grade of Rs. 500-30-800, plus dearness allowance at 10% of the salary.

(b) He contributes 8% of the salary towards his provident fund while the University contributes 12%.

(c) As proctor of the University he received (i) An allowance of Rs. 100 per month. (ii) A rent-free bungalow of the annual municipal valuation of Rs. 540. (iii) An orderly who is paid Rs. 35 per month by the University. (iv) A motor-car allowance of Rs. 45 per month.

(d) His income from examinership amounted to Rs. 1,150 and from Royalty Rs. 1,050.

(e) He holds 50 shares of Rs. 50 each in a limited company, on which a dividend of 12% is declared.

(f) He received a prize of Rs. 500 in a commonsense Cross-word competition.

(g) He earned a profit of Rs. 10,000 on the sale of a property on 15.10.67. He bought the same on 25.2.67.

(h) He pays L.I.P. of Rs. 1,500.

Find out his total income for the assessment year 1968-69 on the assumption that he has decided not to pay annuity deposit.

SOLUTION.

Mr. X's Assessment for the Assessment Year 1968-69.

1. Salaries :			Rs.	Rs.
Salary for 4 months	@	Rs. 500 p. m.....	2,000	
" 8 "	"	Rs. 530 p. m.....	4,240	
Dearness allowance	"	10% of salary...	624	
Proctorship allowance	"	Rs. 100 p. m.....	1,200	
Value of rent-free bungalow		...	540	
Motor car allowance	"	Rs. 45 p. m.....	540	

		B/F	9,144
2.	Income from other sources :		
	Examinership income ...	...1,150	
	Royalty ...	...1,050	2,200
	Dividends—Gross Rs. 300 (Fully exempt as below Rs. 500)		
3.	Capital Gains on a short-term Capital asset (property)		10,000
		Total Income...	21,344
Less :	Deduction for P. F. & L. I. P. u/s 80C : [1,999 (=499+1,500)]×60%		1,200
			20,144
		Or say Rs.	20,140

Note :

(i) Even though employer's contribution is in excess of the employee's contribution to the P. F. yet it is not to be included in the income from salary as P.F. is a statutory one.

(ii) The salary of the orderly at Rs. 35 p.m. would, strictly speaking, be includible in salaries as perquisites, but under executive instructions, such amounts are not to be included.

(iii) Prize of Rs. 500 received in a commonsense crossword competition is a casual income and hence is exempt from tax.

Question.

Q. 1. The following are the particulars of the income of Dr. Satish, a medical practitioner employed as a professor in a medical college in Rajasthan :—

(a) Salary Rs. 750 p. m. plus dearness allowance of Rs. 150 p. m.

(b) 25% Share (=Rs. 6,000) in a Chemist shop in which he is a partner. The Chemist's business has been assessed as an unregistered firm.

(c) $\frac{1}{2}$th share in a Bungalow, the net income of which after deducting all allowances comes to Rs. 6,000.

(d) Dividends : (i) Delhi Cloth Mills Ltd., Rs. 6,000 and (ii) Agricultural Products Rs. 7,000 (50% of the income being taxed.) [Both are gross].

(e) He and his wife are insured for Rs. 20,000. The annual premium comes to Rs. 3,000.

(f) His investments in the previous year were : (i) Rs. 5,000 in 5% tax-free Govt. securities and (ii) Rs. 2,000 in Post Office Savings a/c (interest Rs. 50).

His wife received Rs. 50,000 from her father, and has invested the same in the Chemist's shop and her share in its profits was 25% amounting to Rs. 6,000.

Ascertain the total income and partially exempted income of Dr. Satish for A.Y. 1968-69. Ignore Annuity Deposit.

Ans : Total Income—Rs. 36,350. Partially Exempted Income—Rs. 12,250 P.O.S.B. a/c Interest of Rs. 50 is fully exempt.

Chapter XIV

ASSESSMENT OF HINDU UNDIVIDED FAMILIES

1. A Hindu undivided family under the Income-tax Act is treated as a separate entity and is taxed through its karta or manager. The concept of a joint Hindu family under this Act is different from that of Hindu Law. Under the Income-tax Act, an HUF is assessable in respect of the income of the common property of the family or any income having a nucleus with the joint family property and not in respect of the member's individual earnings even though they live jointly under the common mess.

2. According to the Finance Act, 1968, no income-tax shall be payable by a Hindu undivided family on a total income which does not exceed Rs. 7,000 in a particular previous year provided it, as at the end of the previous year, satisfies either of the following conditions, viz.,

(a) That it has at least two members entitled to claim partition who are not less than 18 years of age ; or

(b) That it has at least two members entitled to claim partition who are not lineally descended one from the other and who are not lineally descended from any other living member of the family.

The maximum non-taxable limit for any HUF not fulfilling any of the above conditions is Rs. 4,000 only. A deduction of Rs. 20 from tax is allowed from the income-tax for each minor coparcener upto a maximum number of two. Thus an HUF having two or more minor co-parceners is not liable to any tax on a total income upto Rs. 4,800. The calculation of tax is explained in Appendix I.

3. Assessment after Partition—Sec. 171.

(i) So long as there is no finding of partition recorded by an Income-tax Officer, the Hindu undivided family assessed as such shall be deemed to be Hindu undivided family.

(ii) Where at the time of making an assessment u/s 143 or 144, it is claimed by or on behalf of any member of a Hindu undivided family that a partition, whether total or partial has taken place among the members of such family, the I.T.O. shall make an enquiry therein after giving notice of the enquiry to all the members of the family.

(iii) On the completion of the enquiry, the I. T. O. shall record a finding as to whether there has been a total or partial partition of the joint family property, and, if there has been such a partition, the date on which it has taken place.

(iv) Thus a partition can be either total or partial. The term "Partition" means (a) where the property admits of a physical division, a physical division of the property, but a physical division of the income without a physical division of the property producing the income shall not be deemed to be a partition ; or (b) where the property does not admit of a physical division, then such division as the property admits of but a mere severance of status shall not be deemed to be a partition. "Partial partition" means a partition which is partial as regards the persons constituting the Hindu undivided family or the properties belonging to the HUF or both.

(v) Where a finding of total or partial partition has been recorded by the I.T.O. under this section, and the partition has taken place during the previous year,—

(a) The total income of the joint family in respect of the period upto the date of partition shall be assessed as if no partition had taken place ; and

(b) Each member or group of members shall, in addition to any tax for which he or it may be separately liable, be jointly and severally liable for the tax on the income so assessed.

(vi) If the partition has taken place after the expiry of the previous year, the income of the joint family shall be assessed as if no partition has taken place.

(vii) After the completion of the assessment of the HUF, if the I. T. O. finds that the family has already affected a partition, whether total or partial, the I. T. O. shall proceed to recover the tax from every person who was a member of the family before the partition, and every such person shall be jointly and severally liable for the tax on the income so assessed. The several liability of any member or group of members thereunder shall be computed according to the portion of the joint family property allotted to him or it at the partition, whether total or partial.

PROBLEM No. 65.

Indicate whether the higher exemption limit of Rs. 7,000 applies to a Hindu undivided family in the following circumstances :—

(a) A Hindu family governed by the Mitakshara school of Hindu Law consists of father, and his two major sons.

(b) An HUF governed by the Mitakshara school of Hindu Law consists of a widow and her two minor sons.

(c) A Mitakshara family consists of two minor brothers only.

(d) A Dayabhaga family (i.e., family governed by the Dayabhaga school of Hindu law which is operative in Bengal as against the Mitakshara school of Hindu law which is operative in the rest of India) consists of two brothers.

(e) A Dayabhaga family consists of a father and his two major sons.

(f) A Dayabhaga family consists of a widow and her four minor sons.

SOLUTION.

(a) Yes. It fulfills the condition (a) of para 2.

(b) No. It does not fulfil any of the conditions in para 2.

(c) Yes. It fulfills the condition (b) of para 2.

(d) Yes. It fulfills the condition (a) of para 2.

(e) No. Uunder the Dayabhaga Law the sons do not have any right to claim partition during the life time of the father. As none of the conditions stated in para 2 above have been fulfilled, the HUF is not entitled to higher exemption limit in spite of the fact that there are more than two mojor members.

(f) No. It does not fulfil any of the conditions of para 2.

PROBLEM No. 66.

M/s PQR a business house managed by an HUF consisting of three major members entitled to claim partition earned an income of Rs. 90,000 for the previous year ended 31-3-68. During the course of assessment proceedings it was claimed on behalf of the members of the family that they had partitioned the family assets in equal shares on 1.12.67. The profits of family upto the date of partition amounted to Rs. 60,000. The profits from the same business later on carried on under a registered firm consisting of the same members with equal shares amounted Rs. 21,000. The members claimed that the partition of the family with effect from 1.12.67 be accepted and registration to the new firm be granted. The I.T.O. made necessary enquiries and accepted the fact of partition, registration and the income earned by the family and passed necessary orders to that effect. Compute the total income of the HUF and the firm and indicate the liability of the three members of the family and the firm.

SOLUTION.

Upto 30. 11. 67 the assessment shall be made on the HUF of PQR on Rs. 60,000. The members of the HUF are jointly and severally responsible for payment of taxes on this sum.

From 1.12.67 the new firm has come into existence. The I.T.O. has granted registration to the new firm. Hence the firm itself is not liable to pay any tax on its income as the same is below Rs. 25,000. The total income of the firm will be allocated amongst the three members in equal shares. Thus each member, i.e., P, Q and R is liable to pay tax on Rs. 7,000 in his individual assessment.

Questions.

Q. 1. Write a short note on the assessment of Hindu undivided families after partition.

Ans. See para 3.

Q. 2. What are the conditions to be fulfilled by an HUF in order to become entitled to a higher exemption limit of Rs. 7,000 ?

Ans. See para 2.

CHAPTER XV

ASSESSMENT OF FIRMS & OTHER ASSOCIATIONS OF PERSONS

1. For the purposes of income-tax a firm may be either (a) registered, or (b) unregistered. The taxation liability of the former differs a great deal from the latter. A registered firm means a firm which is registered by the I.T.O. u/s 185 on an application made in accordance with sec. 184 (as described below) and an unregistered firm means a firm which is not so registered or in whose case the registration originally granted has been cancelled. The registration of a firm under the Indian Partnership Act, 1932 is quite different from the registration of a firm under the Income-tax Act. Here we are concerned with the latter type of registration only.

2. **Registration of Firms** :—The topic of registration of firms has been divided under three sub-headings :—

(i) Application for registration.
(ii) Procedure on receipt of application.
(iii) Cancellation of registration.

They are discussed below :

(i) Application for registration—Sec. 184.

(1) An application for registration of a firm for the purposes of this Act may be made to the Income-tax Officer on behalf of any firm if—

(i) the partnership is evidenced by an instrument ; and
(ii) the individual shares of the partners are specified in that instrument.

(2) Such application may be made to the I.T.O. having jurisdiction to assess the firm, either during the existence of the firm or after its dissolution, and shall be signed—

(a) by all the partners (not being minors) personally ; or

(b) in the case of a dissolved firm, by all persons (not being minors) who were partners in the firm, immediately before its dissolution and by the legal representative of any such partner who is deceased.

In the case of any partner who is absent from India or is a lunatic or an idiot, the application may be signed by any person duly authorised by him in this behalf, or as the case may be, by a person entitled under law to represent him.

(3) The application shall be made before the end of the previous year for the assessment year in respect of which registration is sought. In a suitable case the I.T.O. can entertain application even after the close of the previous year.

(4) The application shall be accompanied by the original instrument evidencing the partnership together with a copy thereof.

(5) The application shall be made in the prescribed Form No. 11 and shall contain the prescribed particulars.

(6) Where registration is granted to a firm it shall have effect for every subsequent assessment year, provided the following conditions are fulfilled :—

(a) there is no change in the constitution of the firm or the shares of the partners as evidenced by the instrument of partnership on the basis of which the registration was granted ; *and*

(b) the firm furnishes, along with its return of income for the assessment year concerned, a declaration to that effect, in the prescribed Form No. 12 and verified in the prescribed manner.

However, if any change has taken place in the previous year the firm shall apply in Form No. 11 A for fresh registration. The former procedure of applying for renewal of registration has, with effect from the assessment year 1962-63, been discontinued.

(ii) Procedure on receipt of application—Sec. 185.

(1) On receipt of an application for the registration of a firm, the I.T.O. shall enquire into the genuineness of the firm and its constitution as specified in the instrument of partnership, and—

(a) if he is satisfied that there is or was during the previous year in existence a genuine firm with the constitution so specified, he shall pass an order in writing registering the firm for the assessment year ; and

(b) if he is not satisfied, he shall pass an order in writing refusing to register the firm.

(2) The I.T.O. shall not reject an application for registration merely on the ground that the application is not in order, but shall intimate the defect to the firm and give it an opportunity to rectify the defect in the application within a period of one month from the date of such intimation.

(3) If the defect is not rectified within such time, the I.T.O. may reject the application.

(4) Where the firm is registered for any assessment year, the I.T.O. shall record a certificate on the instrument of partnership or on the certified copy submitted in lieu of the original one (in special cases only), as the case may be, to the effect that the firm has been registered under this Act, for that assessment year ; and where a declaration is furnished by the firm u/s 187 (7), for the relevant subsequent assessment year.

(5) If there is any failure as is mentioned in section 144 (described later on in Chapter XVIII), the I.T.O. may refuse to register the firm for the assessment year.

(iii) Cancellation of registration—Sec. 186.

(1) If in the case of a registered firm the I.T.O. is of the opinion that during the previous year there was no genuine firm in existence as registered, he may, after giving the firm a reasonable opportunity of being heard and with the previous approval of the I. A. C., cancel the registration of the firm for that assessment year. However, no such cancellation can be

made after eight years from the end of the assessment year in respect of which registration has been granted or has effect.

(2) For any failure as given in Sec. 144, the I.T.O. may after giving not less than 14 days' notice, intimating his intention to cancel its registration and after giving it a reasonable opportunity of being heard, cancel the registration of the firm.

(3) Where the registration of a firm is cancelled for any assessment year, the I.T.O. shall amend the assessment of the firm and its partners for that assessment year on the footing that the firm is an unregistered firm. The provisions of Sec. 154 regarding rectification of mistakes shall apply and the period of four years shall be reckoned from the date of the order cancelling the registration.

3. Method of computation of a partner's share in the income of the firm—Sec. 67.

(1) In computing the total income of an assessee who is a partner of a firm, whether the net result of the computation of the total income of the firm is a profit or loss, his share (whether a net profit or a net loss) shall be computed as follows :—

(a) any interest, salary, commission or other remuneration paid to any partner in respect of the previous year shall be deducted from the total income of the firm, and balance ascertained and apportioned among the partners ;

(b) where the amount apportioned to the partner under clause (a) is a profit, any salary, interest etc., paid to the partner by the firm shall be added to that amount and the result shall be treated as the partner's share in the income of the firm ;

(c) where the amount apportioned to the partner under clause (a) is a loss, any salary etc., paid to the partner shall be adjusted against that amount and the result shall be treated as the partner's share in the income of the firm.

(2) The share of a partner in the income or loss of the firm as computed above, shall be apportioned under the various heads of income in the same manner in which the income or loss of the firm has been determined under each head of income.

(3) Any interest paid by a partner on capital borrowed by him for the purposes of investment in the firm shall be deducted from his share in the income of the firm

4. Registered Firms—Sec. 182.

(*a*) *Income-tax I. Till. A.Y. 1968-69* :—Upto 31st March, 1956, the registered firms themselves were exempt from paying income-tax. Thus upto the assessment year 1955-56 the total income of each partner including his share of profit of the registered firm had to be assessed upon him and the tax payable by him had to be determined. If the tax assessed upon a partner cannot be recovered from him, it shall be recovered from the firm.

But from 1st April,1956,it has been provided that *a registered firm itself should also pay income-tax.* For the A. Y. 1968-69 the following rates of tax are prescribed by the Finance Act, 1968 :—

Rates of Income-tax and Surcharge

In the case of every registered firm.

		Rate of tax
(1)	Upto Rs. 25,000 of Total Income	nil
(2)	Between Rs. 25,001 to 50,000 ,,	6%
(3)	,, ,, 50,001 to 1,00,000	1,500+8% on T.I.—50,000
(4)	Rs. 1,00,001 & above	5,500+12% on T.I.—1,00,000

The amount of income-tax computed at the rates given above has to be increased by a general surcharge at 20% of the income-tax.

In the case of a professional firm whose professional income is not less than 51% of total income, the rate of surcharge is 10% only. I.T. and S.C. has further to be increased by a 10% special surcharge.

The partners of a registered firm are, of course assessed to tax directly as before on their share of profits ; but they get a rebate for income-tax at their personal rates on their share of the tax paid by the firm. *The tax on registered firms is levied*

only in cases where the total income exceeds Rs. 25,000 so that registered firms with small income are not subject to tax.

II. For the A.Y. 1969-70 and onwards.

The Finance Act, 1968 has amended the I.T. Act (with effect from the A.Y. 1969-70) to secure that the tax borne by the registered firm on its income is allowed as a deduction in determining the shares of the partners in the income of the firm and the partners are charged to tax individually on the share so determined. This will obviate the necessity of granting rebate of tax to the partners of the firm on the proportionate amount of the tax borne by the firm.

The rates of the tax payable by R. Fs have also been revised. There is no change in the rates of basic income-tax upto the slab of income of Rs. 50,000. The basic I.T. rate on the incomes of R. Fs in the slab of Rs. 50,001—1,00,000 has been fixed @ 12% as against the current rate of 8%, and on incomes in the slab over Rs. 1,00,000 @ 20% as against the current rate of 12%. There is no change in the rates of surcharges.

(b) *Set off and carry-forward of losses*—Sec. 70 to 75. The loss of a registered firm is in the first instance to be set off against its own income and the balance of the loss is then allocated between the partners. *Each partner can set-off* his share of the firm's loss against his other income in the same year or can carry forward it as business loss to be set-off against other business income for eight following years.

(c) The tax on the non-resident partner shall be assessed on the firm at the rates applicable to him personally, and the tax so assessed shall be paid by the firm.

(d) A regd. firm may retain out of the share of each partner a sum upto 30% thereof until the tax in respect of such share is paid by the partner. If the tax cannot be recovered from a partner, it shall be recovered from the firm upto the extent of amount so retained or could have been so retained.

5. Unregistered Firm—Sec. 183.

(a) *Income-tax* :—An unregistered firm is assessed like an unmarried individual according to the amount of its total income. Partner's shares in the profits of the unregistered firm are included in their total income only for rate purpose. Where an unregistered firm as such pays no tax owing to its total income being less than the taxable minimum, the partners are liable to pay tax on their respective shares of its profits along with their other income.

(b) *Set-off and carry-forward of loss* :—An unregistered firm as such can set off its own loss against its own income and can also carry it forward as a business loss. *A partner of an unregistered firm is not allowed to set off the share of the firm's loss against his other income.*

(c) Sometimes, when the total income of the individual partners is very much higher than that of the unregistered firm, it is advantageous for the firm to remain unregistered. Therefore, to prevent this type of tax-avoidance, the Income-tax Officer can treat an unregistered firm as registered and assess it accordingly—Sec 183(b).

6. Changes in constitution, succession and dissolution of firms. —Sections 187 to 189.

(1) Changes in the constitution of a firm—Sec. 187.

Where at the time of making an assessment order u/s 143 or 144 it is found that a change has occurred in the constitution of a firm, the assessment shall be made on the firm as constituted at the time of making the assessment. The income of the previous year shall, for the purposes of inclusion in the total incomes of the partners, be apportioned between the partners who, in such previous year, were entitled to receive the same. Where the tax assessed upon a partner cannot be recovered from him, it shall be recovered from the firm as constituted at the time of making the assessment. For the purposes of this section, there is a change in the constitution of the firm—

(a) if one or more of the partners cease to be partners or one or more new partners are admitted, in such circumstances that one or more of the persons who were partners of the firm before the change continue as partner or partners after the change ; or

(b) where all the partners continue with a change in their respective shares or in the shares of some of them.

(2) Succession of one firm by another firm—Sec. 188.

Where a firm carrying on a business or profession is succeeded by another firm, and the case is not covered by section 187, separate assessment shall be made on the predecessor firm and the successor firm in accordance with sec. 170 (described in detail in Chapter XVII).

(3) Dissolution or discontinuance of a firm—Sec. 189.

Where any business or profession carried on by a firm has been discontinued or where a firm is dissolved, the I.T.O. shall make an assessment of the total income of the firm as if no such discontinuance or dissolution had taken place, and all the provisions of the Act, including the provisions relating to the levy of a penalty or any other sum chargeable under any provision of this Act, shall apply, so far as may be, to such assessment. A penalty in accordance with the Chapter XXI of the Act, i.e., u/s 270 to 275 may be ordered by the I.T.O. or the A.A.C.

Every person who was at the time of such discontinuance or dissolution a partner of the firm and legal representative of the deceased partner, shall be jointly and severally liable for amount of tax, penalty etc. Proceedings for the assessment of any firm which is discontinued etc, may be continued against the said persons from the stage at which they stood at the time of discontinuance etc.

PROBLEM No. 67.

A, B & C are partners in a firm sharing profits and losses in the proportion of 2 : 2 : 1 respectively. The profit and loss

account of the firm for the year ended 31st December, 1967 is as under :—

	Rs.		Rs.
Sundry Trade Expenses	50,000	Gross profit	1,45,000
		Dividends (gross)	5,000
Interest on Capital :			
A ...	3,000		
B ...	2,000		
C ...	1,000		
Salary to B ...	6,000		
Commission to C	3,000		
Net profit ...	85,000		
	150,000		1,50,000

Compute the total income of the firm and allocate it amongst three partners.

SOLUTION.

Computation of firm's total income for the A. Y. 1968-69. (*In Rs.*)

1. Business profit :			
Net profit as per profit and loss account	...		85,000
Add—Expenditure disallowed :			
Interest on capital	...	6,000	
Partner's salary	...	6,000	
Partner's commission	...	3,000	
			15,000
			1,00,000
Less : Dividends not being business profits			5,000
			95,000
2. Dividends (gross) :			5,000
Firm's Total Income	...		1,00,000

Its allocation amongst the partners u/s 67 (In Rs.) :

Interest on capital	Salary	Commi-ssion	Balance of total income	Total income
A=3,000			34,000	37,000
B=2,000	6,000		34,000	42,000
C=1,000		3,000	17,000	21,000
Total=6,000	6,000	3,000	85,000	1,00,000

PROBLEM No. 68.

A firm had three partners—A,B & C,with shares in the ratio of 4 : 3 : 1 respectively. The firm's profit and loss account for the C. Y. 1967 showed a net loss of Rs. 16,000 after charging the following items—interest on capital—A : Rs. 3,000/-, B : Rs. 2,000/-, C : Rs. 1,000/- and C's salary Rs. 2,000.

A's taxable income from other sources was Rs. 5,000 while B & C had no other income.

Explain how the assessment would be made (a) when the firm is registered and (b) when the firm is unregistered.

SOLUTION.

Allocation of firm's income for the A.Y. 1968-69 (in Rs.) :

After making adjustment for interest on capital and partner's salary, the firm's loss would be Rs. 8,000 and the respective shares of the three partners would be as follows :—

Interest on capital	*Salary*	*Share in firm's loss*	*Total*
A=3,000	...	8,000	Loss 5,000
B=2,000	...	6,000	,, 4,000
C=1,000	2,000	2,000	Profit 1,000
Total 6,000	2,000	16,000	Loss 8,000

(a) When the firm is registered

A can set-off his share of the firm's loss (Rs. 5,000) against his other income of Rs. 5,000, and therefore, he will not be liable to pay any tax.

B can carry forward his share of the firm's loss (Rs. 4,000) for set-off against his future business profits.

C is not liable to tax as his total income is only Rs. 1,000.

(b) When the firm is unregistered

The unregistered firm itself can carry forward its loss of Rs. 8,000 to be set-off against its future income.

A cannot set-off his share of the firm's loss against his other income. He will, therefore, have to pay tax on the full amount of Rs. 5,000.

B cannot carry forward his share of the firm's loss and C is not liable to any tax.

PROBLEM No. 69.

A & B are equal partners in a registerd firm, whose profit and loss account for the year ended 31-12-67 is given below :—

	Rs.		Rs.
Salaries & bonus	6,700	Gross Profit	65,000
General expenses	10,000	Misc. receipts	5,000
Sales-tax	5,000		
Rent and taxes	3,000		
Depreciation reserve	2,000		
Bad debts written-off	1,000		
Bad debts reserve	2,000		
Advertising	3,000		
Subscription & charity	1,000		
Loss on sale of motor car	3,000		
Int. on capital : A	3,000		
B	3,000		
Partners' salaries : A	2,000		
B	2,000		
Commission to B	1,000		
Net Profit	22,300		
	70,000		70,000

(a) General expenses include Rs. 200 for defending a suit regarding infringement of customs rules.

(b) Advertising represents Rs. 1,000 for cost of permanent signs and Rs. 2,000 for cost of insertion in trade journal.

(c) Subscription and charity include (i) Rs. 200 subscription to a trade association, (ii) Rs. 200 cost of constructing a tin-shed for refugees and (iii) Rs. 600 donation to a school.

(d) The motor car is used entirely for private purposes of the partners.

(e) Depreciation to be allowed is Rs. 1,000.

(f) The other income of the partners was as follows :—

A=Interest from Securities (gross) Rs. 5,000 ; Income from property Rs. 1,000 ; Dividends (gross) Rs. 3,000 ; Foreign income of the year not remitted to India Rs. 3,000.

B=Interest from securities (gross) Rs. 7,000 ; Dividends (gross) Rs. 1,000 ; Taxable income from property Rs. 3,000 ; Foreign income of the year remitted to India Rs. 1,000.

Compute the total income of A & B assuming that both of them are resident and ordinarily resident in India.

SOLUTION.

Firm's total income for A. Y. 1968-69. (In Rs.)

Profits as per profit and loss account			22,300
Add :—expenditure disallowed—			
Depreciation Reserve	...	2,000	
Bad debts Reserve	...	2,000	
Interest on capital	...	6,000	
Partners' salaries	...	4,000	
Partner's commission	...	1,000	
Legal expenses	...	200	

	Advertising being capital expenditure ...	1,000	
	Subscriptions and charity ...	800	
	Loss on sale of motor car ...	3,000	20,000
			42,300
Less :	Depreciation		1,000
	Firm's gross total income ...		41,300
Less :	Deduction u/s 80G—50% of Rs. 600 (donation to a school)		300
	Total Income		41,000

Allocation of firm's total income between partners u/s 67 (In Rs.)

	A.	B.
Interest on Capital	3,000	3,000
Salary	2,000	2,000
Commission	—	1,000
Balance of income	15,000	15,000
	20,000	21,000

Assessment of A & B for 1968-69 (In Rs.)

		A	B
1.	Interest on securities (gross)	5,000	7,000
2.	Income from property	1,000	3,000
3.	Business profits	20,000	21,000
4.	Dividend (gross)	3,000	1,000
	Foreign (remitted) income	—	1,000
	Foreign (unremitted) income	3,000	—
	Gross Total income ...	32,000	33,000
Less :	Annuity Deposit @ 9%	2,880	2,970
	Total income	29,120	30,030

PROBLEM No. 70.

A, B, & C were partners in a firm of chartered accountants sharing profits and losses in the ratio of 2 : 1 : 1 respectively. After 8 months C left and P was taken in his place, the proportion of profit and loss being adjusted to 6 : 5 : 5.

For the previous year ending 31st March, 1968 the account books disclosed a profit of Rs. 48,000.

The book profit has been worked after deducting (i) Rs. 4,000 interest paid to A, (ii) Rs. 6,000 salary paid to B, (iii) Rs. 3,000 shop rent paid to C, (iv) Rs. 1,500 commission paid to P, and (v) Rs. 2,000 donation to a charitable institution not exempt under I.T. Act.

The firm has to be allowed depreciation amounting Rs. 30,000.

Compute the total income of the firm and allocate it amongst partners.

SOLUTION.

Firm's Assessment for A. Y. 1968-69. (In Rs.)

Profit as per books		48,000
Add-Interest paid to A		4,000
Salary paid to B		6,000
Commission paid to P		1,500
Donations to charitable institutions		2,000
...		61,500
Less—Depreciation		30,000
Total Income ...		31,500

Allocation amongst partners under section 67 :—

(*In Rs.*)

	A	B	C	P
Interest ...	4,000	—	—	—
Salary ...	—	6,000	—	—
Commission ...	—	—	—	1,500
Balance for 8 months [13,334]	6,667	3,334	3,333	—
for 4 months [6,666]	2,500	2,083	—	2,083
	13,167	11,417	3,333	3,583
or	13,170	11,420	3,330	3,580

Note—(1) No deduction has been allowed u/s 80G as the donations have been given to an institution which is not exempt under the I.T. Act.

(2) The total income has been rounded off to the nearest multiple of Rs. 10 as per Sec. 288A.

PROBLEM No. 71.

ABC is a registered firm in which the shares are equal. Net profit as per profit & loss account, is Rs. 42,000. A has drawn a salary of Rs. 300 p.m. and C the financing partner not working, an interest of Rs. 2,000. Other incomes of the partners are as below :—

A—Nil

B—Salary from an outside firm in which he is a whole time servant Rs. 2,400.

C—Net property income—Rs. 12,000

Work out the total income of the firm and of the partners and the earned income of each assessee for the A.Y. 1968-69.

SOLUTION.

Total Income of the firm of M/s. ABC for the A.Y. 1968-69 :

	Rs.	Rs.
Net income of the firm as per P & L A/c		42,000
Add : Salary to A ...Rs. 3,600		
Interest to C ...Rs. 2,000		5,600
Total Income...		47,600
Tax paid by the firm on Rs. 47,600		
=Tax on the first Rs. 25,000=	nil	
„ next Rs. 22,600 @ 6%=	1,356	
Add : S.C. at 20% on Rs. 1,356	271	1,627
Add : Special S.C. @ 10%	...	163
Total I.T., S.C. & Spl. S.C.	...	1,790

Allocation of the firm's total income *amongst partners* :—

(In Rs.)

Partner	Salary	Interest	Balance of Business Income	Total	Share of tax exempt u/s 86 (iv)
A	3,600	...	14,000	17,600	597
B	...	...	14,000	14,000	597
C	...	2,000	14,000	16,000	597
Total...	3,600	2,000	42,000	47,600	1,791

Total Income of Partners—A, B & C :—

	A	*B*	*C*
(1) Salary from an outside firm...	—	2,400	—
(2) Net property income...	—	—	12,000
(3) Share form the R.F. of M/s. ABC...	17,600	14,000	16,000
Total Income...	17,600	16,400	28,000
Earned Income out of Total Income...	17,600	2,400	nil

N. B.—The Annuity Deposit has not been taken into consideration in this problem.

7. Other Associations of Persons

An association of persons is assessed to income-tax in the same manner as an individual. Each member's share of income from the association is dealt with in his own assessment as if it were a share of profits from an unregistered firm. In the case of discontinuance or dissolution of the association of persons, the provisions stated in para. 6 apply to it also.

Questions

Q. 1. Describe the procedure for registration of a firm. Under what circumstances can it be cancelled ?

Ans. See para. 2.

Q. 2. Differentiate between the assessment of a registered firm and an unregistered firm.

Ans. See paras 4 & 5.

Q. 3. Describe the provisions governing the assessment of firms and their partners as a result of changes in their constitution.

Ans. See para. 6.

Q. 4. A, B, C and D are partners in a registered firm. They have got equal shares. The firm has got an income of Rs. 1,00,000 from business which is determined after deduction of the following payments :— (In Rs.)

	A	B	C	D
Interest	2,000	1,000	1,000	—
Salary	—	5,000	—	10,000
Bonus	—	4,000	—	4,000
Commission on sales	10,000	—	6,000	—
Rent for premises	3,000	—	—	—

Partner A had to pay Rs. 1,000 as interest to Bank on money borrowed from the Bank for investment in the firm.

Compute the total income of the firm and also the gross total income of the partners, assuming that they have no other source of income. Ignore Annuity Deposit.

Ans. Firm's total income Rs. 1,43,000 ;
Partners' income—
Rs. A—39,500, B—35,000, C—32,000, D—39,000

N. B.—The gross total income of the partners is liable to annuity deposit @ 9%.

CHAPTER XVI

ASSESSMENT OF COMPANIES

1. There are several special features of the assessment of a company. Unlike most of the other assessees a company is liable to pay income-tax on its income, however small that figure may be. Thus there is no system of exemption of the income upto a particular limit, e.g., Rs. 4,000 in the case of an individual, Rs. 25,000 in the case of a registered firm etc. Besides, the usual slab rates are not applicable to a company. A company pays income-tax on its total income at *flat rates* as fixed by the Finance Act of the year concerned. There are different types of rates for different types of companies depending on the income and other factors, but the rate applicable to *most* of the Domestic public companies is 55% and private companies 65%. There is no surcharge over these rates. The income-tax paid by a company is for the privilege which it enjoys in the shape of limited liability and corporate finance and is, therefore, known as *"Corporation-tax"*. For details re : other rates etc., please see Appendix I. The several other special features relating to the assessment of companies are described below.

2. **Definitions :**

(A) **Company.—Sec. 2 (17).**

A "Company" means—

(i) any Indian company, or

(ii) any association, whether incorporated or not and whether Indian or non-Indian which is or was assessable or was assessed under the Indian Income-tax Act, 1922, as a company for the assessment year 1947-48 or which is declared by general or special order of the Board to be a company for the purposes of this Act.

(B) Company in which the public are substantially interested.—Sec. 2(18).

A company is said to be a company in which the public are substantially interested—

(a) If it is a company (whether public or private) owned by the Government or the Reserve Bank of India or in which not less than 40% of the shares are held whether singly or taken together by the Government or the Reserve Bank of India or a corporation owned by that Bank ; or

(b) If it is not a private company as defined in the Companies Act, 1956, and

(i) its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than 50% of the voting power have been allotted unconditionally to, or acquired unconditionally by, and were throughout the relevant previous year beneficially held by (a) the Government, (b) or a corporation established by a Central, State or Provincial Act, (c) any company to which this clause applies or any 100% subsidiary company of such company ; or (d) the public (not being a director, or a company to which this clause does not apply) ;

(ii) the said shares were at any time during the relevant previous year the subject of dealing in any recognised stock exchange in India or were freely transferable by the holder to other members of the public ; and

(iii) the affairs of the company or the shares carrying more than 50% of its total voting power were at no time during the relevant previous year controlled by 5 or less persons.

Explanation 1.—In computing the number of 5 or less persons aforesaid,—(i) the Government or any corporation established by a Central, State or Provincial Act or company to which this clause applies or the subsidiary company of such company shall not be taken into account, and (ii) persons

who are relatives of one another, and persons who are nominees of any other person together with that other person, shall be treated as a single person.

Explanation 2—In its application to an Indian company whose business consists mainly (added by Finance Act, 1966) in the manufacture or processing of goods or in mining or in the generation or distribution of electricity or any other form of power the above sub-clause (b) shall have effect as if for the words "not less than 50%" and "more than 50%" the words "not less than 40%" and "more than 60%" had been substituted.

N.B.—The above definition has been so amended by the Finance Acts of 1965 & 1966.

(C) Indian Company.—Sec 2(26).

"Indian company" means a company formed and registered under the Companies Act, 1956, and includes—

(i) a company formed and registered under any law relating to companies formerly in force in any part of India (other than the State of Jammu & Kashmir) ;

(ii) In the case of the State of Jammu & Kashmir, a company formed and registered under any law for the time being in force in that State : Provided that the registered office of the company in all cases is in India.

(D) Domestic company.—Sec. 2 (6) (b) of Finance Act, 1968.

The Finance Act, 1966 inserted this new definition. The Finance Act, 1968 also provides for this definition. A domestic company means an Indian company, or any other company which, in respect of its income liable to income-tax for the assessment year w.e.f. 1968-69 has made the prescribed arrangements for the declaration and payment within India of the dividends payable out of such income in accordance with the provisions of sec. 194 of the I.T. Act.

(E) Industrial company—Sec. 2 (6) (d) of Finance Act, 1968.

This is also a new term which has been defined by the Finance Acts of 1966, 1967 and 1968. An industrial company means a company which is mainly (51% or more) engaged in the business of generation or distribution of electricity or any other form of power or in the construction of ships or in the manufacture of processing of goods or in mining. Such companies enjoy a concessional treatment in the matter of tax.

3. Provision for facilitating amalgamation of uneconomic company units :

For the purpose of facilitating the amalgamation of uneconomic company units with other financially sound Indian companies in the interests of efficiency and productivity the following changes have been made by the Finance (No. 2) Act, 1967 w.e.f. the A.Y. 1967-68 :

(a) The computation of balancing charge u/s 41 (2) or the terminal allowance will not be made in the case of the amalgamating company in respect of transferred assets.

(b) The actual cost as well as the written down value of the transferred assets will be taken in the assessment of the amalgamated company, to be the same as in the case of the amalgamating company.

(c) The amalgamated company will be entitled to amortise the balance capital cost of assets used for scientific research, for promotion of family planning amongst its employees or patent rights or copyrights as if the amalgamation has not taken place.

(d) No capital gains or loss will be computed in the case of the amalgamating company in respect of any capital assets transferred by it to the amalgamated company.

(e) In the case of the amalgamated company the cost of acquisition of the transferred assets will be taken to be the same as in the hands of the amalgamating company.

(f) The share-holders in the amalgamating company receiving shares in the amalgamated company in lieu of their original share-holding will be liable to tax on capital gains only at the stage when they transfer the shares and realise any capital gains thereof. Such capital gains will be computed by taking the cost of acquisition thereof to be the cost of acquisition of the shares in the amalgamating company.

(g) An amalgamated company which is a closely-held company will not be liable to any Gift-tax in respect of the value of the assets transferred by it to the amalgamated company (like the widely-held companies).

(h) The new definition of the term "Amalgamation" now includes not only the merger of two or more companies to form one company but also the merger of one or more companies with another existing company.

4. (a) **Disallowance of Excessive Expenditure on Entertainment, advertisement etc.—Sec. 37 (2) (2A) and (3).**

In the case of companies like any other assessee such expenditure incurred after 30.9.67 is allowed upto a certain percentage of the profits and gains of the company. In excess of the specified limits the entertainment expenditure is disallowed. This was so amended by the Taxation Laws (Amendment) Act, 1967 which inserted a new sub sec. (2A) in sec. 37. The maximum sum admissible is fixed at Rs. 30,000. Similarly, excessive expenditure on advertisement etc., can be disallowed. For details please see Ch. VIII, para 3 (6) & (7).

(b) Disallowance of Excessive or Unreasonable Expenditure, etc.—Sec. 40(c).

The I.T.O. is empowered to disallow any expenditure in the nature of any remuneration or benefit or amenity to a director or to a person who has a substantial interest in the company if he thinks that the expenditure is excessive or unreasonable and expenditure on any benefit, amenity or perquisite to employees

in exceess of 20% of salary from 1. 3. 64. For other details please see para 4 (9) of Ch. VIII.

5. Carry forward and set-off of losses in case of certain companies—Sec. 79.

Normally a company is entitled to carry forward its losses for set-off against its profits in future years in accordance with the principles set out in Chapter XI. But in the case of certain companies the business losses are not allowed to be carried forward unless certain special conditions are fulfilled. Thus, where a change in shareholding has taken place in a previous year in the case of a company (not being a company in which the public are substantially interested) no loss incurred in any earlier year shall be carried forward and set-off against the income of the previous year unless—

(a) on the last day of the previous year the shares of the company carrying not less than 51% of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than 51% of the voting power on the last day of the year or years in which the loss was incurred ; or

(b) the I.T.O. is satisfied that the change in the shareholding was not effected with a view to avoiding or reducing any liability to tax.

6. Deduction in respect of profits and gains from specified industries in the case of certain cos.—Sec. 80 I.

Please sec Ch. XII, para. 9.

7. Special concession to Indian companies providing technical collaboration to foreign companies—new Sec. 80 O.

Please see Ch. XII Para 15 for a detailed description of these provisions.

8. Donations for Charitable Purposes.—Sec. 80G.

In the case of a company the donations for charitable purposes are entitled to a deduction from total income at the rate of 50% of the qualifying sum. In the

case of all other assessees such donations are entitled to deduction @ 55% subject of course to the limits as given in detail in Chapter XII, para 7.

9. Additional income-tax on undistributed profits.—Sections 104 to 109.

An individual has to bear a highly progressive rate of taxation i.e., about 90% in the case of unearned incomes above Rs. 70,000, whereas a company is charged to tax at a flat rate only which is much lower than the maximum rate in the case of an individual. In most of the cases this flat rate of income-tax amounts to 65% only. Big shareholders have to pay taxes of about 90% on the amount of dividend in their own individual assessments. Share-holders of companies in which they have a controlling interest can minimise this tax liability by not distributing the profits of the company and thereby avoiding the high tax liability to which they would otherwise be exposed in their individual assessments. Hence, the Act has certain provisions as described below, which aim at preventing this unjustifiable advantage to persons having controlling interest in the companies. These sections are akin to the provisions of section 23A of the old Act of 1922. The main provisions of these sections as drastically amended by Finance Acts of 1964, 1965 and 1966 are summarised below :—

(i) This special provision does not apply to any company in which the public are substantially interested, or to a subsidiary company of such company if the whole of the share capital of such subsidiary company has been held by the parent company or by its nominees throughout the previous year.—Sec. 108.

(ii) The Central Government may by notification in the Official Gazette exempt any class of companies from the operation of Sec. 104 if is of the opinion that it is necessary or expedient in the public interest so to do—Sec. 104 (3).

(iii) It has also been provided by an amendment of the Act, by the Finance Act, 1964 that Sec. 104 shall not apply to—

(a) An Indian company whose business consists mainly [at least 51%] in the manufacture or processing of goods or in mining or in the generation or distribution of electricity or any other form of power or construction of ships ; (b) An Indian company, the value of whose assets, being machinery and plant (other than office appliances or road transport vehicles), as shown in its books on the last date of the relevant previous year is Rs. 50 lakhs or more & (c) A foreign company (i. e., non-domestic Co.).—Sec. 104 (4).

(iv) Where the I. T. O. is satisfied that in respect of any previous year the profits and gains distributed as dividends by any company within the 12 months immediately following the expiry of that previous year are less than the statutory percentage of the distributable income of the company of that previous year, he shall make an order in writing that the company shall, apart from the sum determined as payable by it on the basis of the assessment u/s 143 or 144, be liable to pay income-tax at the rate of—

(a) 50% in the case of an investment company,

(b) 37% in the case of any trading company, and

(c) 25% in the case of a non-trading company (other than an investment company) on the distributable income as reduced by the amount of dividends actually distributed, if any.

N.B. The above rates of income-tax have been so amended by the Finance Act, 1965.

(v) The I. T. O. shall not make such an order if he is satisfied—

(a) that, having regard to the losses incurred by the company in earlier years or to the smallness of the profits made in the previous year, the payment of dividend or a larger dividend than that declared would be unreasonable or,

(b) that the payment of a dividend or a larger dividend than that declared would not have resulted in benefit to the revenue ; or

(c) that at least 75% of the share capital of the company is throughout the previous year beneficially held by an institution or fund established in India for a Charitable purpose the income from dividend whereof is exempt u/s 11.—Sec. 104(2).

(vi) No such order shall be made by the I.T.O. unless he has obtained the prior approval of the I.A.C. The I.A.C. (i.e., Inspecting Assistant Commissioner of Income-tax) will not give his approval unless he has given the company concerned an opportunity of being heard—Sec. 107.

(vii) No such order shall be made,—

(a) in the case of an investment company which has distributed not less than 80% of its distributable income, or

(b) in the case of any other company whose distribution falls short of the statutory percentage by not more than 10% of distributable income ; or

(c) in any case where according to the return made by a company u/s 139 it has distributed not less than the statutory percentage of its distributable income ; but in the assessment made by the I. T. O. u/s 143 or 144 a higher total income is arrived at and the difference in the total income does not arise out of the application of the proviso to sec. 145(1) or (2) or sec. 144 or the omission, by the company to disclose its income fully and truly ; or

(d) in the case of a company where a reassessment is made under the provisions of sec. 147 (b) and the sum distributed as dividends falls short of the statutory percentage of the distributable income determined on the basis of the reassessment ; unless the company, on receipt of a notice from the I.T.O. that he proposes to make such an order, fails to make within three months of the receipt of such notice a further distribution of its profits and gains so that the total distribution made

is not less than the statutory percentage of the distributable income—Sec. 105.

(viii) No such order u/s 104 can be made after the expiry of four years from the end of the assessment year relevant to the previous year referred to above or after the expiry of one year from the end of financial year in which the assessment or the reassessment of the profits and gains of the previous year aforesaid is made, whichever is later. This period of limitation shall not apply in a case where the company has made an application to the Board u/s 107 A—Sec. 106.

(ix) The Board may reduce the minimum amount of compulsory distribution by an amount upto 20% of the statutory percentage on an application made by a company to the effect. Every such application is to accompanied by a fee of Rs. 100—Sec. 107 A.

(x) **Certain definitions—Sec. 109.**

(1) **Distributable income**—It means the gross total income of a company as reduced by—

(a) the amount of income-tax payable by a company in respect of its total income, but excluding the income-tax payable under Sec. 104 ;

(b) the amount of any other tax levied under any law for the time being in force on the company by the Government or by a local authority in excess of the amount, if any, which has been allowed in computing the total income ;

(c) any sum with reference to which a deduction is allowed under the provisions of section 80G ;

(d) losses under the head, "Capital Gains" relating to long-term capital assets ;

(e) income arising outside in a country the laws of which prohibit or restrict the remittance of money to India :

Provided that, when the prohibition or restriction is subsequently removed, any reduction allowed under this provision shall be deemed to be a part of the distributable

income of the previous year in which the prohibition or restriction is removed ;

(f) in the case of a banking company, the amount actually transferred to a reserve fund u/s 17 of the Banking Companies Act, 1949 ;

(g) any expenditure actually incurred for the purposes of the business, but not deducted in computing the income chargeable under the head "Profits and gains of business or profession" being—

(1) a bonus or gratuity paid to an employee,

(2) legal charges,

(3) any such expenditure as is referred to in sec. 40(c),

(4) any expenditure claimed as a revenue expenditure but not allowed to be deducted as such and not resulting in the creation of an asset or enhancement in the value of an existing asset ;

(h) any expenditure wholly and exclusively incurred for the purpose of making or earning any income (other than income chargeable under the head "Profits and gains of business or profession") included in the gross total income but not allowed to be deducted in computing such income and not resulting in the creation of an asset or enhancement in the value of existing asset.

(2) **Statutory percentage.**—It means.....

(i) in the case of an investment company.....90%

(ii) in the case of an Indian company, [not being an Indian Co. falling u/s 104 (4) (a)] a part only of whose total income consists of profits & gains attributable to the business of construction of ships or of manufacture or processing of goods or of mining or of generation or distribution of electricity or any other form of power—

(a) in relation to the profits and gains attributable to such business ... ... Nil

(b) in relation to the remaining part of its total income.

(1) if it is company which satisfies the conditions specified in clause (iv) (a) below...90%

(2) in any other case.....60%.

The provisions of ss. 104 to 109 shall, in relation to the remaining part of the total income as aforesaid, apply as if such part were the total income of the company ; and for the purposes of sec. 104, the amount of dividends actually distributed shall be deemed to be such proportion thereof as the part aforesaid bears to the total income of the company. This provision has been so amended by the Finance Act, 1966.

(iv) in the case of any other company not referred to in the preceding clauses—

(a) where the accumulated profits and reserves (including depreciation reserves and any amounts capitalised from the earlier reserves) representing accumulations of past profits, which have not been subject of an order under section 104 or the corresponding provision of the Indian Income-tax Act, 1922 exceed, **either**

I. the aggregate of (i) the paid up capital of the company exclusive of the capital, if any, created out of its profits and gains which have not been the subject of an order u/s 104, and (ii) any loan capital which is the property of the shareholders ; **or**

II. the value of the fixed assets as shown in the books of the company, whichever of these is greater.....90%.

N.B.—The Finance Act, 1965 has amended this provision to secure that in the case of a non-trading company the word "exceed" will be substituted by the words "exceed twice the amount" to allow the manufacturing companies to accumulate more reserves.

(b) where sub-clause (a) does not apply.....60%.

(3) **Investment company.—**

It means a company whose total income consists mainly of income which, if it had been the total income of an individual, would have been regarded as unearned income. This definition has been amended by the Finance Act, 1968 to be effective from the A. Y. 1969-70.

(4) **Trading company.—**

It means a company whose business consists wholly or mainly in dealing in goods or merchandise manufactured, produced or processed by a person other than that company and whose income attributable to such income included in its total income is not less than 51% of the amount of such total income.

PROBLEM No. 72.

Subhash & Brothers Pr. Ltd., to which the provisions of Section 104 are applicable has earned Rs. 10,00,000 net profits during the previous year ended 31st March, 1968. The assessed figure of profits and gains chargeable u/s 28 of the Act, as per the I.T.O. comes to Rs. 11,50,000. It distributes Rs. 1,20,000 as dividends on 29.6.68 for the same year. It has paid Rs. 1,00,000, as donations to a charitable institution which is exempt u/s 80G. Besides, it has paid bonus to its general manager amounting to Rs. 40,000 ; Rs. 17,500 out of the said bonus was not allowed by the I.T.O. The sur-tax payable under the Companies (Profits) Sur-tax Act, 1964 is, say Rs. 7,500. Find out the additional income-tax payable by the company u/s 104 of the Act when it is an (i) Investment company. (ii) Indian trading company.

SOLUTION.

The distributable income of the company for the A. Y. 1968-69 is as under :—

			Rs.
Net profit assessed to tax u/s 28...			11,50,000
Less : Deduction u/s 80G :			
@ 50% of Rs. 1,00,000			50,000
Gross Total Income			11,00,000
Less : (1) Income-tax @ 65%		7,15,000	
(2) Sur tax		7,500	
(3) Bonus		17,500	7,40,000
			3,60,000

The statutory percentage of the distributable income of the company in the two cases is worked out below :—

(i) Investment Co. —90% of Rs. 3,60,000=Rs. 3,24,000

(ii) Indian Trading Co.—60% of ,, =Rs. 2,16,000

Thus in both the cases the amount of dividends distributed i.e., Rs. 1,20,000 is less than the statutory percentage. Hence the Co. will be required to pay additional income-tax on the amount of the distributable income i.e., Rs. 3,60,000 less : Rs. 1,20,000 the amount of dividends actually distributed which means Rs. 3,60,000 less 1,20,000 i.e., Rs. 2,40,000. The additional income-tax will be levied on this sum, which is calculated as under :—

		Rs.
(i)	Investment Co. @ 50% of Rs. 2,40,000	=1,20,000
(ii)	Indian Trading Co. ,, 37% ,, ,,	= 88,800

10. Tax on Capital gains—Sec. 115.

Please refer to Chapter IX, Para. 6.

11. Company in liquidation—Sec. 178.

The following are the special provisions regarding the companies in liquidation :—

(1) Every liquidator or receiver of any company in liquidation shall, within thirty days after his appointment, give notice of such appointment to the I. T. O. who is entitled to assess the income of the company.

(2) Within three months from the date on which the I.T.O. receives notice of the appointment, he shall notify to the liquidator the amount which, in his opinion would be sufficient to provide for any tax which is then, or is likely to become payable by the company.

(3) Unless he is notified by the I.T.O. the liquidator shall not part with the assets of the company and properties in his hands except with the previous approval of the C. I. T. On being notified by the I.T.O. he shall set aside the notified amount and until he so sets aside such amount, he shall not part with any of the assets of the company or the properties in

his hands except for the purposes aforesaid or for making any payment to secured creditors whose debts are entitled under law to priority of payment over debts due to Government on the date of liquidation.

(4) The liquidator shall be personally liable if he parts with the assets before being notified by the I. T. O. or does not set aside the amount notified as stated above. The liabilities and obligations of all the liquidators shall be joint & several.

(5) The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.

12. Liability of directors of private company in liquidation —Sec. 179.

Notwithstanding anything contained in the Companies Act, 1956, when any private company is wound up after 1.4.62, and any tax assessed on the company, whether before or in the course of or after its liquidation, in respect of any income of any previous year cannot be recovered, then every person who was director of the private company at any time during the relevant previous year shall be jointly and severally liable for the payment of such tax unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

13. Relief to company in respect of dividends paid out of past taxed profits.—Sec. 236

This has been discussed in detail in Chapter IV.

14. Inoformation by companies respecting shareholders to whom dividends have been paid—Sec. 286.

The principal officer of every company which is an Indian company or a company which has made such arrangements as may be prescribed for the declaration and payment of dividends in India shall, on or before the 15th day of June in each year furnish to the Income-tax Officer assessing the company a

return in the prescribed Form No. 51 and verified in the prescribed manner of the names and addresses, as entered in the register of shareholders maintained by the company, of the shareholders to whom a dividend or aggregate dividends exceeding one rupee in the case of a shareholder when it is a company and Rs. 5,000 in the case of any other shareholder has or have been distributed during the preceding year. All these particulars so prescribed are now contained in the Rule 117 of the Income-tax Rules, 1962.

Note—The word 'principal officer', means the secretary, treasurer, manager or agent of the company, or any person connected with the management or administration of the company on whom the I.T.O. has served a notice of his intention of treating him as the principal officer thereof.

PROBLEM No. 73.

From the following information compute a Sugar Mill Company's total income for 1968-69 assessment year :—

Profit & Loss A/c for the year ended 31st March, 1968.

	Rs.		Rs.
Opening stock	52,400	Sales of Sugar & Molasses	10,58,400
Cane purchases	4,69,200	Closing Stock	76,100
Manufacturing expenses	2,56,300		
Salaries & Wages	25,200		
Stores consumed	46,600		
General Expenses	8,500		
Commission & Brokerage	36,400		
Interest on loan	9,000		
Directors' fees	5,500		
Audit fees	700		
Taxes	4,300		
Bad debts & reserve for B/D	29,600		
Depreciation	64,800		
Balance c/d	1,26,000		
	11,34,500		11,34,500

Managing Director's remuneration at 10%	12,600	Balance b/f from Previous year	8,200
Reserves	75,000		
Provision for dividends	30,000	Balance b/d	1,26,000
Carry forward	16,600		
	1,34,200		1,34,200

(i) Rs. 10,000 on account of a liability foregone by a creditor to whom the sum was due by way of commission charged by the company in the revenue account of preceding years and Rs. 30,000 on account of speculation profits have been carried to a special reserve. It is claimed that speculation is not the regular business of the company.

(ii) Salaries and wages include Rs. 2,000 on account of Company's contribution to an Unrecognised provident Fund.

(iii) General expenses include—(a) Rs. 500 donation to a hospital ; (b) Rs. 1,000 subscription to the Sugar Syndicate whose object is to regulate Sugar sale prices ; (c) Rs. 1,600 shifting a part of the factory premises to better site.

(iv) Commission and Brokerage include Rs. 10,000 on account of secret commission disbursed through the Managing Director. The Company is prepared to satisfy the Income-Tax Authorities in every respect except furnishing the names of payees as such disclosure would be determental to the business.

(v) Taxes are entirely on account of Sales Tax levied by the State Government.

(vi) The bad debts amount to Rs. 14,800,

(vii) The Depreciation allowable is Rs. 55,000.

SOLUTION.

Company's Assessment for the A. Y. 1968-69.

	Rs.	Rs.
Profit as per P. & L. Account	...	1,26,000
Add :		
1. Liability foregone by a creditor as already charged in the preceding years—Sec. 41 (a)	...10,000	
2. Speculation Profits (Claim of the Company that it is not the regular business of the company cannot be accepted)	...30,000	
3. Company's contribution to Unrecognised P.F. on the assumption that it does not provide for any deduction of tax at source—Sec. 40 (a) (iv)	... 2,000	
4. Shifting expenses being capital expenditure	... 1,600	
5. Secret Commission	...10,000	
6. Reserve for bad debts	...14,800	
7. Depreciation (treated separately)	...64,800	
8. Donation	... 500	
		1,33,700
		2,59,700
Less :		
9. Depreciation allowable	...55,000	
10. Managing Director's Remuneration	12,600	67,600
Company's Gross Total Income...		1,92,100
Less : Deduction u/s 80G @ 50% on Rs. 500		250
Company's Total Income		1,91,850

Questions.

Q. 1. Write short notes on :—

(a) Principal Officer.
(b) Company.
(c) Company in which the public are substantially interested.

Ans. (a) See para. 14.
(b) „ „ 2.
(c) „ „ 2.

Q. 2. Write a short note on the levy of additional income-tax on the undistributed profits of a company.

Ans. See para. 9.

Q. 3. Discuss the liability of directors of a private company in liquidation.

Ans. See para. 12.

Q. 4. Write a short note on a company in liquidation.

Ans. See para. 11.

CHAPTER XVII

ASSESSMENT OF NON-RESIDENTS

1. Definition.—Sec. 2 (30).

A "non-resident" means a person who is not a "resident" (within the meaning of Sec. 6, as stated in Chapter III) ; and for the purposes of sections 92, 93, 113 and 168, includes a person who is not ordinarily resident within the meaning of sec. 6 (6). In para 4 below I have dealt with the circumstances when a non-resident will also include a person who is resident but not ordinarily resident.

2. Basis of Charge.—Sec. 5 (2).

The total income of any previous year of a person who is non-resident includes all income from whatever source derived which—

(a) is received or is deemed to be received in India in such year by or on behalf of such person ; or

(b) accrues or is deemed to accrue or arise to him in India during such year.

Thus it is clear that non-residents are chargeable on their Indian income only.

3. Tax in the case of non-resident.—Sec. 113.

A. upto A. Y. 1964-65.

The tax payable by a non-company non-resident on its total income is equal to—

(a) the income-tax which would be payable on his total income at the *maximum rate, plus*

(b) either the super-tax which would be payable on his total income at the rate of 19% or the super-tax which would be payable on his total income if it were the total income of a resident, whichever is greater.

B. From A.Y. 1965-66 & onwards.

The Finance Act, 1965 has omitted Sec. 113 to secure that a non-company non-resident will now be chargeable to tax like a resident.

4. Non-resident to include 'not ordinarily resident' also.—Sec. 6 (6).

For the purposes of the following sections a non-resident person also includes a person who is resident but not ordinarily resident in India :—

(a) Income from transactions with non-residents, how computed in certain cases—Sec. 92.

Where a business is carried on between a resident and a non-resident and it appears to the I.T.O. that owing to the close connection between them, the course of business is so arranged that the business transacted between them produces to the resident either no profit or less than the ordinary profits which might be expected to arise in that business, the I.T.O. shall determine the amount of profits which may reasonably be deemed to have been derived therefrom and include such amount in the total income of the resident.

(b) Avoidance of income-tax by transactions resulting in transfer of income to non-residents—Sec. 93.

Where there is any transfer of assets by virtue of or in consequence whereof, either alone or in conjunction with associated operations, any person has the power to enjoy the income of any non-resident, the first mentioned person, under certain conditions, shall be chargeable to income-tax as if it were his income.

(c) Tax in the case of non-resident.—Sec. 113.

The provisions in this regard have been explained in para. 3 above.

(d) Executors.—Sec. 168.

Under this section the executor of a deceased person is deemed to be resident or non-resident according as the deceased person was a resident or non-resident during the previous year in which his death took place.

5. Agent of a non-resident.—Sections 160 & 161.

A non-resident may by assessed direct or through an agent. The following provisions re : agent of a non-resident are therefore, very important.

(1) Representative assessee.—Sec. 160 (1) (i) provides that a representative assessee means in respect of the income of a non-resident specified in clause (i) of sec. 9 (1), the agent of the non-resident including a person who is treated as an agent under section 163.

(2) Under Section 9 (1) (i) the following type of income is deemed to accrue or arise in India :—

"All income accruing or arising, whether directly or indirectly, through or from any business connection in India or through or from any property in India, or through or from any asset or source of income in India, or through or from any money lent at interest and brought into India in cash or in kind or through the transfer of a capital asset situate in India."

However, in the case of a non-resident, no income shall be deemed to accrue or arise in India, to him through or from operations which are confined to the purchase of goods in India for the purpose of export. This is as per amendment of the section by the Finance Act, 1964.

(3) Who may be regarded as agent—Sec. 163.

Agent of non-resident includes any person in India :—

(a) who is employed by or on behalf of the non-resident ; or

(b) who has any business connection with the non-resident ; or

(c) from or through whom the non-resident is in receipt of any income, whether directly or indirectly ; or

(d) who is the trustee of the non-resident ;

and includes also any other person who, whether a resident, or non-resident, has acquired by means of a transfer, a capital asset in India.

However, a broker in India who in respect of any transactions, does not deal directly with or on behalf of a non-resident principal but deals with or through a non-resident broker shall not be deemed to be an agent under this section in respect of such transactions, if the following conditions are fulfilled, viz.,

(i) the transactions are carried on in the ordinary course of his business through the first mentioned broker ; and

(ii) the non-resident broker is carrying on such transactions in the ordinary course of his business and not as principal.

No person shall be treated as the agent of a non-resident unless he has had an opportunity of being heard by the I.T.O. as to his liability to be treated as such.

6. **Profits of non-residents from occasional shipping business.** —Sec. 172.

The following are the provisions regarding the levy and recovery of tax in the case of occasional shipping business of non-residents :—

(1) Where any ship belonging to or chartered by a non-resident, carries passengers, livestock, mail or goods shipped at a port in India, $\frac{1}{6}$th of the amount payable on account of such carriage is deemed to be income accruing in India.

(2) If there is no agent of such non-resident, then only these provisions shall apply.

(3) Before departure or within 30 days of the same, the master of the ship shall prepare and furnish to the I.T.O.

a return of the full amount on account of the carriage of goods etc.

(4) On receipt of the return the I.T.O. shall determine the sum payable as tax thereon at the rate or rates for the time being applicable to a company which has not made the arrangement referred to in Sec. 194 and such sum shall be payable by the master of the ship.

(5) Nothing prevents the owner or charterer of the ship from claiming before the expiry of the relevant assessment year that an assessment be made of the total income of the previous year. The tax paid by him earlier will be treated as an advance towards the regular assessment.

(6) A port clearance is not granted to the ship until the tax assessable under this section has been duly paid or that satisfactory arrangements have been made for the payment thereof.

7. Recovery of tax in respect of non-residents—Sec. 173.

The tax chargeable on the income of a non-resident may be recovered by deduction under any of the provisions of Chapter XVIIB of the Act and any arrears of tax may be recovered also in accordance with the provisions of this Act from any assets of the non-resident which are or may at any time come within India.

8. Share of a non-resident from registered firm.—Sec. 182(3).

Where any of the partners of registered firm is a non-resident, the tax on his share in the income of the firm shall be assessed on the firm at the rate or rates which would be applicable if it were assessed on him personally, and the tax so assessed shall be paid by the firm.

PROBLEM No. 74

Mr. X is resident but not ordinarily resident in India for the assessment year 1964-65. He has not exercised his option

to be assessed at the total world income rate. His total income amounted to Rs 16,000. Discuss the tax liability of Mr. X. Will the tax liability be different for the A.Y. 1968-69.

SOLUTION.

For the A.Y. 1964-65, Mr. X is to be taxed as non-resident u/s 113 of the Act. He will be liable to Income-tax at the maximum rate of 25% plus surcharge @ $17\frac{1}{2}$% thereon and super-tax @ 19% on Rs. 16,000.

For the A.Y. 1968-69, Mr. X will be liable to income-tax on Rs. 16,000 at the rates fixed by the Finance Act, 1968 viz., Rs. 1,500+20% of Rs. 1,000 (16,000—15,000) i.e., 1,700 increased by a Spl. S. C. of 10% i.e., Rs. 170 ; total tax being Rs. 1,870.

Questions

Q. 1. Write a short note on the method of levying tax in the case of non-residents.

Ans. See para 3.

Q. 2. Who can be regarded as agent of a non-resident ?

Ans. See para 5.

Q. 3. What are the provisions under which a person who is resident but not ordinarily resident is to be regarded as a non-resident.

Ans. See para 4.

CHAPTER XVIII

ASSESSMENT IN OTHER SPECIAL CASES

—Sections 159 to 189.

1. Legal representative.—Sec. 159.

(i) When a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased. The legal representative of the deceased shall, for the purposes of the Act, be deemed to be an assessee.

(ii) For the purpose of making an assessment of the income of the deceased and for the purpose of levying any sum in the hands of the legal representative all the provisions of the Act shall apply to him as they would have applied to the deceased person.

(ii) The liability of the legal representative is limited to the extent to which the estate is capable of meeting the liability.

2. Representative assessees—Sections 160 to 167.

(1) "Representative assessee" means—

(i) in respect of the income of the non-resident specified in Sec. 9 (1) (i), the agent of the non-resident including a person who may be treated as an agent u/s 163 (as described in detail in Ch. XVI) ;

(ii) in respect of the income of a minor, lunatic or idiot, the guardian or manager who is entitled to receive or is in receipt of such income on behalf of such minor, lunatic or idiot ;

(iii) in respect of income which the Court of Wards, the Administrator-General, the Official Trustee or any receiver or manager appointed by or under any order of a court,

receives or is entitled to receive, on behalf or for the benefit of any person, such Court of Wards etc. ;

(iv) in respect of income which a trustee appointed under a trust declared by a duly executed instrument in writing whether testamentary or otherwise (including any Wakf deed) receives or is entitled to receive, on behalf or for the benefit of any person, such trustee or trustees.

(2) Every representative assessee shall be liable to assessment in his own name in respect of that income ; but any such assessment shall be deemed to be made in representative capacity only. The tax shall be levied upon and recovered from him in like manner and to the same extent as it would be leviable upon and recoverable from the person represented by him.

(3) Every representative assessee is entitled to recover the taxes so paid by him.

(4) In respect of persons mentioned in Sec. 160 (1) (iii) & (iv) if the income is not specifically receivable on behalf or for the benefit of any one person, or where the individual shares of the persons on whose behalf or for whose benefit such income or such part thereof is receivable are indeterminate or unknown tax shall be charged as if such income or part thereof were the total income of an association, or where such income or such part thereof is actually receivable by a beneficiary, then at the rate or rates applicable to the total income or total world income of the beneficiary if such course would result in a benefit to the revenue.

(5) Direct assessment as well direct recovery of tax from the beneficiaries can also be made.

3. Executors.—Sections 168-169.

(1) The income of the estate of a deceased person shall be chargeable to tax in the hands of the executor,—

(a) if there is only one executor, then as if the executor were individual ; or

(b) if there are more executors than one, then, as if the executor were an association of persons ; and the executor shall be deemed to be resident or non-resident according as the deceased person was a resident or non-resident during the previous year in which his death took place.

(2) Separate assessment shall be made on the total income of each completed previous year or part thereof as is included in the period from the date of the death to the date of complete distribution to the beneficiaries of the estate according to their several interests.

(3) Income specifically distributed or applied to the benefit of any specified legatee shall be excluded from the assessment but shall be included in the total income of the previous year of such specific legatee.

4. Succession to business otherwise than on death. —Sec. 170.

In the case of succession to business the predecessor shall be assessed in respect of the income of the previous year in which the succession took place upto the date of succession, and the successor shall be assessed in respect of the income of the previous year after the date of succession. If the predecessor cannot be found, the assessment of his income shall be made on the successor and he shall be liable to pay the tax in the same manner and to the same extent as the predecessor.

5. Assessment of persons leaving India —Sec. 174.

(1) When it appears to the I.T.O. that any individual may leave India during the current assessment year or so shortly after its expiry and that he has no present intention of returning to India, the total income of such individual for the period from the expiry of the previous year for that assessment year upto the probable date of his departure from India shall be chargeable to tax in that assessment year.

(2) The I.T.O. may estimate the income of such individual

for such period or part thereof, where it cannot be readily determined in the manner provided in this Act.

(3) The rates in force in that assessment year shall be the rates at which the income of each completed previous year or part of any previous year shall be chargeable. Separate assessments shall be made in respect of each such completed previous year or part of any previous year.

(4) The I.T.O. may serve a notice upon such individual requiring him to furnish within such time, not being less than seven days a return setting forth his total income in respect of each completed previous year and estimated total income for any part of the previous year.

6. Persons trying to alienate their assets—Sec. 175.

If it appears to the I.T.O. during any current assessment year that any person is likely to sell, charge, transfer, dispose of or otherwise part with any of his assets with a view to avoiding payment of any liability under the provisions of the Act, the total income of such person for the period from the expiry of the previous year for that assessment year to the date when the I.T.O. commences proceedings under this section shall be chargeable to tax in that assessment year in the same manner as in the case of a person leaving India.

7. Discontinuance of business or dissolution—Sections 176-178.

(1) Where any business or profession is discontinued in any assessment year, the income of the period from the expiry of previous year for that assessment year up to the date of such discontinuance may, at the discretion of the I.T.O. be charged to tax in that assessment year.

(2) Any person discontinuing any business or profession shall give to the I.T.O. notice of such discontinuance within 15 days thereof.

(3) Where any professional sum is received after the discontinuance of the profession, on account of the cessation of

the profession by, or the retirement or death of the person carrying on profession, it shall be deemed to be the income of the recipient and shall be charged in the year of receipt.

(4) In the case of dissolution, or discontinuance of the business of the association, the provisions as stated in Ch. XIV shall apply.

8. Royalties or copyright fees for literary or artistic work —Sec. 280.

Where the time taken by author of a literary or artistic work in the making thereof is more than 12 months the amount received or receivable by him during any previous year on account of any lumpsum consideration for the assignment or grant of any of his interests in the copyright of that work or of royalties or copyright fees (whether receivable in lumpsum or otherwise), in respect of that work, shall, if he so claims, be allocated for the purposes of assessment in such manner and to such period as is prescribed by rule 9 of the Income-tax Rules, 1962. The expression "lumpsum" includes an advance payment on account of such royalties or copyright fees which is not returnable.

PROBLEM No. 75.

Miss Gita received Rs. 10,000 as salary from a college and Rs. 9,000 as lumpsum payment on the sale of her copyright in one book written by her. Discuss the manner in which she will be liable to pay tax on the sum of Rs. 9,000.

SOLUTION.

Section 180 of the Income-tax Act, 1961 provides that the tax in respect of lumpsum receipts on account of copyright etc., shall be dealt with in accordance with the Rules made by the Board. According to Rule 9 Income-tax on Rs. 13,000 (19,000 *minus* $\frac{2}{3}$ of Rs. 9,000) at an average rate of income-tax on Rs. 13,000 *plus* income-tax on the balance of Rs. 6,000 ($\frac{2}{3}$ of Rs. 9,000) at an average rate on a total income of Rs. 13,000 (10,000 *plus* $\frac{1}{3}$ of 9,000), will be payable for the A.Y. 1966-67.

For the assessment years 1967-68 and 1968-69, Rs. 3,000 will be included in the total income of each year and tax shall be computed accordingly. A reduction to the extent of $\frac{1}{2}$ of the tax on Rs. 6,000 at the average rate of Rs. 13,000 computed in A.Y. 1966-67 will be given in each of the subsequent assessment years.

9. Bondwashing—Section 94.

The Income-tax Act has enacted this provision with an aim *to prevent the avoidance of tax by certain transactions in shares and securities* which are known as bond washing. Interest on securities and dividend on shares accrue not from day to day but only on certain definite dates. Therefore, the holder of shares and securities on those dates is the person chargeable to tax in respect of interest and dividend. But if the transfer is (cum-interest or cum-dividend) just before the due date of interest or dividend, he would be free from the tax liability. Now if the transferee also happens to be a person having little or no income otherwise, he will be exempt from tax in respect of the interest or dividend. Thus the tax is partly or wholly avoided. After the due date the transferor can get his security back and put himself in his original position. This is a bond washing transaction. In such cases, this section provides that the transferor shall be regarded as the owner despite the transfer.

10. Other special cases :

The liability to assessment and tax in several other cases like the tax on capital gains, compensation receipts, etc., tax in the case of non-residents, assessment of HUFs after partition, assessment of firms, liability of liquidators of a company, liability of directors of private company in liquidation etc., have been amply described in the earlier chapters and hence they have not been repeated here.

Questions

Q. 1. Write short notes on :—

(1) Liability of legal representatives.
(2) „ „ representative assessees.
(3) „ „ executors.

Ans. (1) See para. 1.
(2) See para. 2.
(3) See para. 3.

Q. 2. Describe the method of assessment of persons intending to leave India for good.

Ans. See para. 5.

Q. 3. What are the special provisions for the assessment of lumpsum royalties or copyright fees by authors.

Ans. See para. 8.

PART IV

ASSESSMENT & APPELLATE PROCEDURE

CHAPTER XIX

PROCEDURE FOR ASSESSMENT—Sections 139 to 158.

1. The foregoing description of the Income-tax Law dealing with the determination of the total income of different assessees is not an end in itself. The main thing is the assessment of an assessee and the knowledge of the procedure thereof. The term assessment means the determination of (i) the total income of an assessee ; and

(ii) the amount of the tax payable by him or the amount of refund due to him.

We have already dealt with the first matter in an earlier chapter. The computation of tax is contained in Appendix I. The procedure of assessment is, however, comprised of the following stages.

2. Return of income—Sections 139 & 140.

(1) The actual assessment procedure begins with the filing of a return of total income by an assessee either of his own accord or in pursuance of a notice issued by the Income-tax Officer. From 1.4.62 it has been made obligatory on persons having taxable income to file returns of income voluntarily by the following dates :—

(i) A person having income from business or profession must file his return of income *before the 30th day of June* of the assessment year, *or within six months* from the end of the previous year, whichever is later.

(ii) Any other person is required to file his return before *the 30th day of June* of the assessment year concerned.

(2) the above dates can be extended by the Income-tax Officer in his discretion. The following provisions in this connection are very important to note :—

(i) The I.T.O. can extend the date of filing the return of income upto *30th day of September* in the case of a person having business income and whose previous year ended on or before 31st day of December and in cases covered by para. (1) (ii) above.

(ii) In the case of person having business income and whose previous year ended after *31st day of December* the I.T.O. can extend the date of filing the return upto 31st day of December of the assessment year concerned without charging any interest.

(iii) Where returns are filed beyond the dates as given above, interest at 9% p. a. shall be payable (on the net tax payable) from the 1st day of October or the 1st day of January, as the case may be of assessment year to the date of furnishing of the return. The interest shall be reduced if the total income is reduced subsequently as a result of rectification, appeal order etc. Besides, the I.T.O. can also reduce or waive the interest in certain circumstances as per Rule 117A.

(iv) A registered firm will be liable to pay interest as if it is an unregistered firm. In the case of any other assessee interest shall be calculated on the amount of tax payable on the total income as finally assessed, reduced by the advance tax, if any, paid or by any tax deducted at source, as the case may be.

(3) If an individual notice is served on any assessee, who in the opinion of the I.T.O. had taxable income during the relevant previous year, he shall submit a return of income within 30 days of the receipt of notice. The I.T.O. can extend the date of filing the return of income in his discretion. However, if the date of filing the return whether fixed originally by the notice u/s 139 (2) or on extension, falls beyond the 30th day of September or the 31st day of December, as the

case may be, interest shall be charged in a manner indicated above.

(4) The return of income shall be signed and verified—

(a) in the case of an individual, by the individual himself; where the individual is absent from India, by the individual concerned or by some person duly authorised by him in this behalf; and where the individual is mentally incapacitated from attending to his affairs, or by his guardian or by any other person competent to act on his behalf,

(b) in the case of a Hindu undivided family, by the Karta and where the Karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family;

(c) in the case of a company or local authority, by the principal officer thereof;

(d) in the case of a firm, by any partner thereof, not being a minor;

(e) in the case of any other association by any member of the association or the principal officer thereof; and

(f) in the case of any other person by that person or by some person competent to act on his behalf.

(5) Assessees having losses under the head "Capital gains" have also been allowed to file returns showing such lossess. An assessee can file a return or revised return at any time before the assessment is made but this period will not extend beyond a period of four, three or two years which is the time available to an Income-tax Officer to make a normal assessment.

(6) It has been made obligatory for the members of the association of persons etc., to indicate in the return the names of other members of the association or the body and the extent of shares of the assessee and the shares of all such members, in the profits and gains of the business or profession and any branches thereof.

PROBLEM No. 76.

Calculate the interest payable by a businessman for the belated filing of return of income for the Assessment year 1968-69 in the following cases :—

S. No.	Accounting year ended	Date of filing the Return extended by I.T.O. upto	Net demand on the completion of the Assessment, say
(1)	31-10-67	31-12-68	Rs. 1,000
(2)	30-11-67	30-9-68	—do—
(3)	28-2-68	31-3-69	—do—
(4)	31-3-68	31-12-68	—do—

SOLUTION.

(1) In this case the businessman should file his return of income within six months after the close of his accounting year or before 30th June, 1968, whichever is later. The I.T.O. can extend the time upto 30-9-68 without charging any interest. Here the return is filed even beyond that period. Hence he is liable to pay interest at 9% on Rs. 1,000 for the period of 3 months (i.e., 1-10-68 to 31-12-68) which will be Rs. 23.

(2) Here the businessman has filed his return of income by 30-9-68 and hence he is not liable to pay any interest.

(3) In this case as the accounting period of the assessee extends beyond 31st day of December, the I.T.O, can extend the date of filing the return of income upto 31-12-68 without charging any interest. But the return of income is filed late by 3 months. Hence he is liable to pay interest at 9% on Rs. 1,000 for 3 months which will be Rs. 23.

(4) In this case as the assessee has filed his return of income by 31-12-68 the date upto which the I.T.O. can extend the period of filing of return without charging any interest, no interest is payable by him.

3. Self assessment—Sec. 140 A.

This provision has been inserted by the Finance Act, 1964. It provides that where a return has been furnished u/s 139 and the tax payable on the basis of that return as reduced by any tax already paid under any provision of this Act exceeds Rs. 500, the assessee should pay the tax so payable within 30 days of furnishing the return. If any assessee fails to pay the tax or any part thereof in the above manner he shall be liable to pay a penalty which may be upto 50% of the amount of tax not paid. This will not apply if a provisional assessment u/s 141 or regular assessment u/s 143 or u/s 144 has been made within the aforesaid period of 30 days.

4. (A) Provisional assessment—Sec. 141.

In order to remove the possibility of deferring the payment of taxes, the I.T.O. is empowered to make a provisional assessment in advance of the regular assessment on the basis of the assessee's own return of income. Unabsorbed depreciation and losses brought forward shall be given set-off from the income shown and the balance only shall be liable to provisional assessment. Any tax paid towards such an assessment is regarded as having been paid towards the regular one. There is no right of appeal against provisional assessment and the amount of tax determined by it must be paid within the time given by the I.T.O.

(B) Provisional assessment for Refund—new Sec. 141A.

The Finance Act, 1968 has inserted a new provision in the I.T. Act to enable tax payers to claim a refund of tax on a provisional assessment made on the basis of the return of income and the accounts and documents accompanying it. Any refund of tax on the basis of such provisional assessment will be deemed to have been issued in respect of the regular assessment when such assessment is completed.

5. Regular Assessment—Sections 142 and 143.

(1) Before making an assessment the I.T.O. is empowered to make necessary enquiry for the purpose of obtaining full information in respect of the income or loss of any person. He can also ask him to produce such accounts and such documents as he may require. However, he shall not require the production of any accounts relating to a period more than three years prior to the previous year. He can, with the prior approval of the I.A.C., require an assessee to furnish a total wealth statement, whether included in the accounts or not. The assessee shall be given a reasonable opportunity of being heard in respect of any material gathered on the basis of any enquiry made by him and proposed to be utilised for the purpose of the assessment—Sec. 142.

(2) If the I.T.O. accepts the return made u/s 139 as correct, he may not call the assessee or the books of accounts or any other evidence, and may determine the sum payable by him or refundable to him on the basis of such return.

(3) If the I.T.O. is not satisfied about the correctness of the return made u/s 139, he may give a notice to the assessee to produce further evidence or to attend at the I.T.O.'s office in support of return. Then the I.T.O. after taking into account all relevant materials for consideration, shall by an order in writing assess the total income or loss of the assessee and determine the sum payable or refundable on the basis of such assessment.

6. Best Judgment Assessment—Sec. 144.

(1) If any person—

(a) fails to make the return required by any notice given u/s 139 (2) and has not made a return or a revised return u/s 139 (4) or (5), or

(b) fails to comply with all the terms of a notice issued u/s 142 (1) regarding the production of accounts or total wealth statement etc., or

(c) having made a return fails to apply with all the terms of a notice issued u/s 143 (2) regarding personal attendance or production of further evidence in support of the return of income made,

the Income-tax Officer, after taking into account all relevant material which the I.T.O. has gathered, shall make the assessment of the total income or loss to the best of his judgment and determine the sum payable or refundable to the assessee on the basis of such assessment.

(2) The I.T.O. must not act dishonestly or capriciously because he has to exercise judgment in the matter. He must make what he honestly believes to be a fair estimate of the proper figure of assessment. In making a best judgment or *ex-parte* assessment, he should be guided by rules of justice, equity and good conscience.

(3) Rights against an ex-parte assessment.

The assessees have the following two rights against a best judgment or ex-parte assessment :—

(i) Reopening of assessment at the instance of the assessee —Sec. 146.

Where an assessee assessed u/s 144 makes an application to the I.T.O. within one month from the date of service of a notice of demand issued in consequence of the assessment, for the cancellation of the assessment on the ground that he was prevented by a sufficient cause from not complying with the requirements of a notice etc., which resulted into such an assessment, the I.T.O. shall, if satisfied about the existence of such a ground, cancel the assessment and proceed to make a fresh assessment u/s 143 or 144.

(ii) A right of Appeal—Sec. 246.

He can u/s 246 appeal to the Appellate Assistant Commissioner of income-tax against the quantum of total income or tax u/s 144 or for refusal of the I.T.O. to reopen the assessment u/s 146.

7. Method of Accounting—Sec. 145.

Income chargeable under the head "profits and gains of business or profession" or "income from other sources" shall be computed in accordance with the method of accounting regularly employed by an assessee. In any case where the accounts are correct and complete to the satisfaction of the I.T.O. but the method employed is such that in the opinion of the I.T.O. the income cannot properly be deduced therefrom, then the computation shall be made upon such basis and in such manner as the I.T.O. may determine. Where the I.T.O. is not satisfied about the correctness or the completeness of the accounts, or where no method of accounting has been regularly employed by the assessee, the I.T.O. may make an assessment in the manner provided in sec. 144 dealing with the making of best judgment assessment. It is therefore, very important that an assessee should regularly employ a system of accounting. But the Act is silent about the different systems of accounting that may be followed by assessees. Broadly speaking the methods of accounting are of the following three kinds :—

(*1*) *Cash system*—Under this system only the actual cash received and paid is recorded. This method is normally followed by professional people like doctors, advocates etc.

(*2*) *Mercantile system*—Under this system, income and expenditure pertaining to a particular accounting year are accounted for whether or not they are actually received or paid. They are accounted for on accrual basis. According to this system, actual profits and losses of a business can be ascertained. This is the system which is mostly used in the mercantile world.

(*3*) *Hybrid or Mixed system*—Truly speaking, this is no system at all ; it is a mixture of the above two systems and hence the name.

8. Income escaping assessment or Re-assessment or Additional Assessment—Sections 147 to 153.

(1) Where income chargeable to tax has been under assessed, or where such income has been assessed at too low a rate, or where such income has been made the subject of excessive relief under this Act or the Act of 1922 or where excessive loss or depreciation allowance has been computed, and (a) the I. T. O. believes that it is due to the omission or failure on the part of the assessee to disclose fully and truly all facts in return, or (b) when he comes to know of it in consequence of information in his possession.

He may reassess such income or recompute the loss or the depreciation allowance, as the case may be, for the assessment year concerned.

(2) A notice in respect of a case covered by section 147 (a), i.e., where the assessee is at fault, can be issued—

(i) within a period of eight years from the end of the relevant assessment year (with the prior approval of the C. I. T.) ; or (ii) when eight years have expired but not more than sixteen years, from the end of relevant assessment year, if the escaped income is likely to amount to Rs. 50,000 or more for that particular assessment year. This means that during the A. Y. 1968-69 no notice can be issued for any assessment year prior to the A.Y. 1952-53. This notice can be issued with the prior approval of the Board only.

(3) A notice in respect of cases covered by section 147(b), i.e., where the I.T.O. takes action in consequence of some information in his possession, can be issued within a period of four years from the end of the relevant assessment year.

(4) For completion of such assessment u/s 147, the following time-limits have been prescribed :—

(i) *In cases of assessment, reassessment or recomputation u/s 147(a)*—A period of four years from the end of the assessment year, in which the notice *u/s* 148 was served.

(ii) *In cases falling u/s 147(b)*—A period of four years from the end of the assessment year in which the income was first assessable, or the expiry of one year from the date of service of the notice u/s 148, whichever is later.

(5) The time limits for completion of assessment u/s 143 or 144 are as under :—

(a) (i) A period of *four* years from the end of the assessment year in which the income was first assessable, where the assessment year is A.Y. 1967-68 or any prior assessment year ;

(ii) A period of three years from the end of the assessment year in which the income was first assessable, for the A.Y. 1968-69 only ;

(iii) A period of *two* years from the end of the assessment year in which the income was first assessable, for A.Y. 1969-70 and onwards, or

Note :— The above Clause (a) was so amended by the Finance Act, 1968.

(b) A period of eight years from the end of the assessment year in which the income was first assessable, in a case falling u/s 271 (1)(c) i.e., for concealment of income ; or

(c) A period of one year from the date of filing of a return or a revised return u/s 139(4) or (5).

(6) The time limits laid down above are not to apply :—

(a) Where a fresh assessment is to be made u/s 146, i.e., where a best judgment assessment is to be cancelled and a fresh assessment is to be made ;

(b) Where an assessment, reassessment or recomputation is to be made to give effect to or in consequence of an order of any higher appellate, revisional or judicial authority or any court in a proceeding under this Act ;

(c) Where an assessment is to be made on a partner of a firm consequent on the re-assessment of the firm u/s 147.

(7) The following period has to be excluded in computing the time-limits :—

(a) any time taken in re-opening or the hearing of a case u/s 129 ; or

(b) any period during which the assessment proceeding is stayed by an order or injunction of any court.

PROBLEM No. 77.

During the assessment year 1968-69, the I.T.O. has reason to believe that income amounting to Rs. 70,000 has escaped assessment for the A.Y. 1959-60. Discuss the action which the I.T.O. is empowered to take for assessing the income, and state the time within which the notice for assessing it can be issued and the assessment completed.

SOLUTION.

As the income escaping assessment for the A. Y. 1959-60 is in excess of Rs. 50,000, a notice u/s 148 for the assessment of such income for the A.Y. 1959-60 can be issued, with the previous approval of the Board, within 16 years, i.e., by the assessment year 1975-76. Supposing he has issued and served a notice on 16.6.68, then the assessment must be completed by the assessment year 1972-73 (i.e., four years from the end of the A.Y. 1968-69 during which the notice was served).

PROBLEM No. 78.

For the A.Y. 1960-61, Mr. X has been assessed on a sum of Rs. 20,000 only. During the course of assessment proceedings for the A.Y. 1968-69 it was found that he did not disclose Rs. 15,000 income for that year. State the action which the I.T.O. can now take for the A.Y. 1960-61.

SOLUTION.

As the assessee Mr.X has concealed an income of Rs. 15,000 from the return for the A.Y. 1960-61, he has come within Sec. 147(a) of the Act. A notice for re-assessing this income can be issued by the I.T.O. with the prior approval of the C.I.T., within eight years from that assessment year. This means that he must issue a notice u/s 148 for the

re-assessment of the income of A.Y. 1960-61 within the A.Y. 1968-69 itself. Such a re-assessment of the income of the A.Y. 1960-61 can be completed by the assessment year 1972-73.

PROBLEM No. 79.

During the course of assessment for the year 1968-69 the I.T.O. finds that an income of Rs. 5,000 has escaped assessment for the A. Y. 1964-65. There is no fault of the assessee in regard to this income. State the action to be taken by the I.T.O.

SOLUTION.

This is a case which falls within the provisions of section 147(b) of the Act. The I.T.O. must issue a notice within the assessment year 1968-69 itself for the assessment of Rs. 5,000 for the A.Y. 1964-65. The notice, for assessment of the income of Rs. 5,000 is, say, served on the assessee on 3.6.68. The assessment u/s 147(b) for the A.Y. 1964-65 must, therefore, be completed before 3.6.1969.

9. Rectification of Mistakes—Sections 154 & 155.

The Income-tax Officer, the Appellate Assistant Commissioner, the Inspecting Assistant Commissioner and the Commissioner may rectify any mistake apparent from the record, either on his own motion or on an application by the assessee, **within four years** from the date of the order sought to be amended or rectified. A similar power has also been given to the Appellate Tribunal u/s 254(2). If the order of rectification has the effect of enhancing the liability of an assessee, no such order shall be passed unless the authority concerned has given notice to the assessee of his intention of doing so and has allowed him a reasonable opportunity of being heard.

Other amendments [s. 155].—Certain special cases of amendment of assessments are contained in s. 155. Such cases, generally speaking, would not come within s. 154 because the amendment may not be covered under the expression "mistake apparent from record" Hence special provisions are enacted

for certain special cases. In all such cases the period of limitation for amendment or rectification of assessment is 4 years. When, why, how and where the amendments can be done in the case of an assessee are summarised below :—

Sl. No.	Reason for amendment	Which assessment to be amended	Time limit of 4 years to be reeckoned from
(1)	Assessment, reassessment or reduction or enhancement made in the income of the firm.	Assessment of the partner so as to include the final share from the firm.	the date of the final order in the case of the firm.
(2)	Assessment, reassessment or reduction or enhancement made in the income of an association of persons or of a body of individuals.	Assessment of the member so as to include the final share from such association or body.	the date of the final order passed in the case of the association or body.
(3)	Modification of E.P.T. or B. P. T. payable by the assessee or assessment of E.P.T.after the completion of I.T. assessment.	Consequential amendment of the total income of the assessee.	the date of the order making or modifying the assessment of E.P.T. or B.P.T.
(4)	Recomputation of loss or depreciation as a result of proceedings initiated u/s 147.	Recomputation of the total income of the 'a'. for the succeeding year/s to which the loss or dep. is carried forward.	the date of the order passed u/s 147.

(5)	Sale etc. of the asset on which dev. rebate is granted after 31.12. 57 or unauthorised use of the dev. rebate reserve or sale etc. of the land on which dev. allowance was granted before the expiry of 8 years.	Recomputation of the total income of the assessee for the relevant previous year so as to disallow such development rebate or allowance.	the end of the previous year in which the sale etc. took place or the money was utilised.
(6)	Finding by the I. T.O. that the bad debt u/s 36 (1) (vii) became a bad debt in any of the four previous years (preceding the year in which it is written off)	Recomputation of the company for such earlier previous year.	the end of the financial year in which the assessment (of the previous year in which the debt is written off) is made.
(7)	Recomputation of distributable income of a company (where an order u/s 104 has been made) as a result of any proceeding under this Act.	Determination of the income-tax payable on the basis of such recomputation.	the date of the final order passed in the case of the company in respect of that proceeding.
(8)	Recomputation of capital gains not chargeable to tax u/s 54.	Exclusion of exempted capital gains from the assessment.	the date of the assessment.

10. Notice of demand—Sec. 156.

Where any tax, interest, penalty, fine or any other sum (including annuity deposit) is payable in consequence of any order passed under this Act, the I.T.O. shall serve upon the assessee a notice of demand in the prescribed Form No. 7 or 9 as the case be, specifying the sum so payable. The assessee

must pay the demand within 35 days or any other time mentioned in the notice.

11. Intimation of loss—Sec. 157.

Any loss which an assessee is entitled to carry forward and set off, must be intimated by the I..T.O. to the assessee by an order in writing.

12. Intimation of assessment of firm—Sec. 158.

Where a registered firm is assessed or an unregistered firm is assessed u/s 183 (b) as a registered firm ; the I.T.O. shall notify to the firm by an order in writing the amount of its total income assessed and the apportionment thereof between the several partners.

Questions

Q. 1. Write short notes on :—(1) Return of income. (2) Intimation of loss. (3) Intimation of the share of the partners. (4) Rectification of mistakes. (5) Additional assessment. (6) Method of Accounting.

Ans. See (1) Para. 2. (2) Para. 11. (3) Para. 12. (4) Para 9. (5) Para. 8. (6) Para. 7.

Q. 2. What do you understand by a best judgment assessment ? Under what circumstances is it made ? What are the remedies of the assessee against such an assessment ?

Ans. See para. 6.

Q. 3. Discuss the provisions of self-assessment u/s 140A.

Ans. See Para. 3.

Q. 4. Explain the new provision for grant of refund of tax on provisional assessment made on the basis of the return of income.

Ans. See Para. 4 (B).

Q. 5. Discuss the provisions re : time limits for completion of assessments in view of the provisions of the Finance Act, 1968.

Ans. See para. 8 (5).

CHAPTER XX

PENALTIES, OFFENCES & PROSECUTIONS

A. Penalties.

1. Non-compliance of summons—Sec. 131.

Where a person to whom a summons is issued either to attend to give evidence or produce books of account or other documents at certain place and time, intentionally omits to attend or produce books of account or documents at the places or time, the income-tax authority may impose upon him such fine not exceeding Rs. 500 as it thinks fit.

2. Failure to furnish information regarding securities etc.—Sec. 270.

If any person without reasonable excuse fails to comply with a notice issued u/s 94(6), (as described in Chapter XVIII, Para. 9) the I. T. O. may direct that such person shall pay by way of penalty a sum not exceeding Rs. 500 and by way of further penalty a like amount for every day after the infliction of such penalty during which the failure continues.

3. Failure to furnish returns, comply with notices, concealment of income etc.—Sec. 271.

(1) The following are the three types of cases covered by this section :—

(a) Failure to furnish the return of income or failure to furnish the return of income within the time allowed u/s 139 or 148 ; or

(b) Failure to comply, without a reasonable cause, with a notice u/s 142 (1) for production of accounts, documents etc. or u/s 143 (2) for production of evidence etc., or

(c) Concealment of income or furnishing inaccurate particulars of income.

The Finance Act, 1964 has added an *Explanation* to Sec. 271. It provides that where the total income returned by any

person is less than 80% of the total income (or the correct income) as assessed u/s 143 or 144 or 147 (reduced by any bonafide expenditure incurred by the assessee but disallowed by the I. T. O.), such person shall, unless he proves that the failure to return the correct income did not arise from any fraud or any gross or wilful neglect on his part, be deemed to have concealed the particulars or furnished inaccurate particulars of such income for the purpose of section 271 (1)(c).

(2) The penalties for the three types of defaults shall be leviable only after the assessee has been heard or has been given a reasonable opportunity of being heard. The following are the provisions regarding the levy of penalties in the type of cases mentioned above :—

(i) For cases referred to in clause (a).

The minimum penalty is 2% of the tax for every month during which the default continues, subject to a maximum of 50% of the tax. No such penalty shall be chargeable on an assessee whose total income does not exceed the maximum amount not chargeable to tax in his case by Rs. 1,500. However, if any individual notice for filing a return of income is served on an assessee and he proves that he has no income liable to tax, the penalty imposable shall not exceed Rs. 25. No such penalty can be levied on the agent of a non-resident for failure to furnish the return voluntarily.

(ii) For cases referred to in clause (b).

The minimum penalty is 10% and the maximum is 50% of the amount of tax, if any, which would have been avoided if the income returned by such person had been accepted as the correct income.

(iii) For cases referred to in clause (c).

I. Upto the A.Y. 1967-68 :

The minimum penalty is 20% and the maximum penalty is 150% of the amount of tax, if any, which would have been

avoided if the income returned by such person had been accepted as the correct income. If the minimum penalty imposable exceeds Rs. 1,000, the penalty shall be imposable only by the I. A. C. (Inspecting Assistant Commissioner of Income-tax) as provided for in sec. 274.

II. For the A.Y. 1968-69 & onwards :

The Finance Act, 1968 has made drastic changes in the provisions regarding minimum and maximum penalty leviable in cases of concealment. The minimum penalty and the maximum penalty for concealment now will be 100% and 200% respectively, not of the amount of tax, but of the *amount* of *concealed income* itself.

PROBLEM No. 80.

Indicate the minimum and the maximum penalties imposable u/s 271 (1) of the I.T. Act in the following cases :—

(1) P whose previous year is the financial year 1967-68 gets the time extended for filing the return of income upto 31-12-68 but files it only on say, 31-3-1969. The tax on assessment comes to Rs. 1,000.

(2) Q fails to comply with a notice for the production of books of accounts for the A.Y. 1968-69 which entails the assessment to end in exparte. The difference in the tax on income finally determined by the I.T.O. and the income returned by Q comes to Rs. 2,000.

(3) R files a return of income on 18.6.68 showing a total income of Rs. 10,000. The I.T.O. detects a concealment of Rs. 20,000 and assesses him on Rs. 30,000.

SOLUTION.

(1) In this case there is a delay of three months in the submission of return (after the extended time by the I.T.O.). Hence the minimum penalty will be 2% p.m. on Rs. 1,000 for three months, i.e., Rs. 60 and the maximum penalty will be 50% of Rs. 1,000, i.e., Rs. 500.

(2) The minimum penalty in this case is 10% of Rs. 2,000, i. e., Rs. 200 and the maximum penalty is Rs. 1,000 (50% of Rs. 2,000).

(3) The minimum penalty for concealment of income for the A.Y. 1968-69 is 100% of the concealed income i. e., Rs. 20,000. The maximum penalty is 200% of Rs. 20,000 i. e., Rs. 40,000.

Waiver or reduction of minimum penalty u/s 271 (1) (i) or 271 (1) (iii) on Voluntary Disclosure—Sec. 271 (4A) :

With a view to encourage voluntary disclosures of undisclosed income, the Income Tax Amendment Act, 1965 has inserted a new sub-section (4A) in section 271 which empowers the Commissioner in his discretion, to reduce or waive the amount of minimum penalty imposable u/s 271 (1) (i) or 271 (1) (iii) in the case of an assessee who has voluntarily and in good faith made full and *true disclosure of his concealed income*, before detection of the same by the Income-tax Officer and, in addition, has co-operated in any enquiry relating to the assessment of the concealed income and has either paid or made satisfactory arrangements for payment of any tax or interest which may become payable in respect of the income concealed. Where the amount of minimum penalty imposable under section 271 (1) (iii) in respect of all assessment years involved exceeds Rs. 50,000 the previous approval of the Board has to be obtained by the Commissioner.

ADHOC Voluntary disclosure scheme, 1965.

The Finance Act, 1965 had by sec. 68 (which had come into effect from 1. 3. 1965) introduced a voluntary disclosure scheme, the provisions of which are explained in brief below :

(a) The Voluntary Declaration was to be made by the assessee concerned before the C.I.T. only by 31.5.65.

(b) Tax @ 60% (or 57% only till 31.3.1965) was to be paid in cash by 31.5.1965 or was to be paid within 6 months from the date of declaration on furnishing of

bank guarantee or Government securities for the unpaid tax or 50% of the tax was to be paid in cash or secured by bank guarantee etc. and the balance was to be secured by furnishing of security in the form of shares, debentures or immovable property. The Finance (No. 2) Act, 1967 has amended the section to condone delays in payment of tax in 6 months and provided for other matters.

(c) The declarant was entitled to credit the balance 40% (or 43%) of such money in books under intimation to the I.T.O.

(d) There will be no investigation in such case with respect to such declaration of unaccounted money.

(e) There is complete immunity from penalty or prosecution in respect of the amount so declared.

(f) No additions will be made in respect of the amount so declared in the pending assessments.

(g) All proceeding will be treated as confidential.

(h) The C.I.T. will issue a certificate to the assessee concerned re : the amount disclosed, the tax paid and the date of payment.

One Block Voluntary Disclosure Scheme.

The Finance (No. 2) Act, 1965 had, by sec. 24, introduced another voluntary disclosure scheme, under which disclosures of unaccounted income could be made between 19.8.65 and 31.3.66 in respect of previous years upto the previous year relevant to the A.Y. 1964-65. Such voluntarily disclosed income was treated as one block and was chargeable to tax at the rates given in the Finance Act, 1965 with some minor adjustments. Income which was detected or which was deemed to be detected by the I.T. Dept. could not be disclosed under this scheme. 10% tax had to be paid within 35 days of the receipt of the demand notice and the balance 90% tax could be paid in instalments extending upto a period of 4 years, upon the furnishing of adequate security acceptable to the C.I.T. The scheme was over on 31.3.1966.

4. Failure to give notice of discontinuance—Sec. 272.

Where any person fails to give the notice of discontinuance of his business or profession as required by Sec. 176 (3), the I.T.O. may direct that a penalty not less than 10% of the tax and not exceeding the amount of tax subsequently assessed on him in respect of any income of the business or profession up to the date of its discontinuance, be recovered from him.

5. False estimate of or failure to pay advance tax—Sec. 273.

If the I.T.O. in the course of any proceedings in connection with the regular assessment, is satisfied that any assessee—(a) has furnished u/s 212 an estimate of the advance tax payable by him which he knew or had reason to believe to be untrue, or (b) has without reasonable cause failed to furnish an estimate of the advance tax payable by him in accordance with the provisions of Sec. 212 (3).

He may direct that such person, shall, in addition to the amount of tax, if any, payable by him, pay by way of penalty a sum (i) which in the case referred to in clause (a), shall not be less than 10% but shall not exceed $1\frac{1}{2}$ times the amount by which the advance tax actually paid during the financial year immediately preceding the assessment year falls short of either (i) 75% of the tax determined on regular assessment as modified u/s 215, or (2) where a notice u/s 210 was issued to the assessee, the amount payable thereunder, whichever is less ; and

(ii) which in the case referred to in clause (b), shall not be less than 10% but shall not exceed $1\frac{1}{2}$ times the amount on which interest is payable u/s 217.

Note—No order imposing a penalty under sections 220 to 274 shall be passed after the expiration of two years from the date of the completion of the proceedings in the course of which the proceedings for the imposition of penalty have been commenced.

PROBLEM No. 81.

S files an estimate of Rs. 1,000 as the amount of advance tax payable by him during the financial year 1966-67 and pays the said sum accordingly. On regular assessment the tax demand comes to Rs. 2,400. Compute the minimum and the maximum penalty u/s 273.

SOLUTION.

There would not have been any liability to penalty had S paid 75% of Rs. 2,400 i.e., 1,800 as tax on an estimate filed by him. But in this case he has paid only Rs. 1,000, i.e., Rs. 800 (1,800—1,000) less than the marginal limit allowed by the Act. Hence the minimum penalty u/s 273 will be 10% of Rs. 800, i.e., Rs. 80 and the maximum penalty will be Rs. 150% of Rs. 800, i.e., Rs. 1,200.

B. OFFENCES & PROSECUTIONS

6. Failure to make payments or deliver return or statements or allow inspection—Sec. 276.

If a person fails without reasonable cause or excuse to comply with the provisions of sections 133, 134, 139 (2), 142 (1), 203, 206, 226 or 286, he shall be punishable with a a fine which may extend to Rs. 10 for every day during which the default continues.

7. Failure to give notice etc., by a liquidator—Sec. 276A.

The Finance Act, 1966 has inserted a new sec. 276A to provide that a liquidator who fails to comply with the provisions of sec. 178 (1) & (3) shall be punishable as u/s 277.

8. Failure to deduct and pay tax—new sec. 276B.

The Finance Act, 1968 has inserted a new section 276B in the I. T.Act to provide that a person who fails to deduct or after deducting fails to pay the tax as required by the law shall be punishable on conviction before a Court, with rigorous imprisonment up to six months, and shall also be liable to fine. The fine shall not be less than 15% p.a. of the tax in default

for the period upto the date of the payment of the tax to the credit of the Central Government.

9. False statement in declaration—Sec. 277.

For false statement in any verification under the Act or under the Rules, an assessee is punishable with rigorous imprisonment for a term which may extend to two years. In the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, such imprisonment shall not be for less than 6 months. This is added by the Finance Act, 1964.

10. Abetment of false return etc.—Sec. 278.

For the abetment of a false return, statement or declaration etc. the punishment is the same as in para. 8.

Note.—A person shall be proceeded against for an offence u/s 276 or 276A or 278 anly at the instance of Commissioner of Income-tax who has full powers to compound any such offence.—Sec. 279.

11. Disclosure of particulars by public servants—Sec. 280.

If any public servant furnishes any information or produces any document in contravention of the provisions of Sec. 138(2), he shall be punishable with imprisonment which may extend to 6 months and also be liable to fine. Sanction of the Central Govt. is required for the prosecution.

12. Fine for non-furnishing of Information by contractors in certain cases—Sec. 285A :

The Direct Taxes (Amendment) Act, 1964 has inserted a new s. 285A in the I.T. Act. Under this provision assessees securing contracts of a value exceeding Rs. 50,000/- for the construction of a building or the supply of goods or service in connection therewith, will be required to furnish relevant information relating to such contracts to the I.T.O. concerned *within a month* of making the contract, failing which they will be liable to imposition of a fine by the C.I.T. not exceeding Rs. 50/- for each day of default, subject to a further limit of

25% of the value of the contract. Rule 120 of the I.T. Rules, 1962 (as inserted by the I.T. (Amendment) Rules, 1965) has prescribed that the required particulars should be furnished as per Form No. 52.

Questions

Q. 1. What are provisions for the levy of minimum and maximum penalties for failure to submit return of income and for concealment of income ?

Ans. See para. 3.

Q. 2. What are minimum and the maximum penalties imposable for failure to pay advance tax ?

Ans. See para. 5.

Q. 3. What is the liability for non-compliance with the terms of a summons issued under section 131 ?

Ans. See para. 1.

Q. 4. Write a short note on the three methods of making voluntary disclosure of unaccounted money.

Ans. See para. 3.

CHAPTER XXI

COLLECTION AND RECOVERY OF TAX & ANNUITY DEPOSITS.

1. Different modes of tax payment.

Under the provisions of the Income-tax Act, tax is paid to the Government in different ways as given below :—

(A) Deduction of tax at source.

(B) Advance payment of tax.

(C) Direct payment as a result of any assessment u/s 140A, 141, 143, 144 or 147.

(A) Deduction of tax at source—Sections 192-206.

2. Types of income subject to deduction of tax at source.

Under this scheme, deduction of tax is made at the time of making payment to the assessee in the following cases only :—

(1) Salaries ;
(2) Interest on Securities ;
(3) Dividends ;
(4) Other Interest ;
(5) Payments to non-residents.

3. Detailed provisions re : tax-deduction at source.

The following are the special provisions regarding deduction of tax at source for the financial year 1968-69 :—

(a) In the case of *salaries* payable to residents, income-tax should be deducted at the *rate appropriate to the estimated salary* for the year at the rates given in the Finance Act, 1968 (See Appendix A)—Sec. 192.

(b) In the case of interest on securities & dividends, income-tax tax *at the rate or rates in force* is to be deducted at source.—Sec. 193, 194. Sec. 2 (37A) introduced by the

Finance (No. 2) Act, 1967 defines the expression "rate or rates in force" to mean the rate or rates specified for the purpose of deduction of tax by the Finance Act of the relevant year in which such deduction is required to be made.

(c) The Finance (No. 2) Act, 1967 has made a new provision for Deduction of tax from other interest, credited to the account of the recipient or paid to him after 30th September, 1967 by any assessee (other than an individual or an H.U.F.) in excess of Rs. 400 (at one time) as stated in the table given below—Sec. 194A.

(d) In the following cases no deduction of tax has to be made at source :—

(i) Any interest payable on 4¼% National Defence Bonds, 1972, where the Bonds are held by an individual, not being a non-resident ;

(ii) Any interest payable to an individual on 4¼% National Defence Loan, 1968, or 4¾% National Defence Loan, 1972 ;

(iii) Any interest payable on National Savings Certificates (First Issue) ;

(iv) Any interest payable on 6½% Gold Bonds, 1977 or 7% Gold Bonds, 1980, where the Bonds are held by an individual, not being a non-resident, and the holder thereof makes a declaration in writing before the person responsible for paying the interest that the nominal value of such Bonds held by him or by any other person on his behalf did not exceed Rs. 10,000 at any time during the period to which the interest relates ;

(v) Any interest payable on any other security of the Central or State Govt. where the security is held by an individual, not being a non-resident, and the holder thereof makes a declaration in writing before the person responsible for paying the interest that—

(a) he has not previously been assessed to income-tax ;

(b) his total income of the previous year in which the interest is due is not likely to exceed the maximum amount not chargeable to tax ; and

(c) the total nominal value of the securities held by him (including such securities if any, as are held on his behalf by any other person) did not exceed Rs. 2,500 at any time during the said previous year.

(vi) No deduction of tax shall be made by any person from any sums payable to the Government, the Reserve Bank of India or any exempted statutory corporation in respect of any interest or dividend or any other income accruing or arising to it—Sec. 196.

(vii) No deduction shall be made in the case of a payment as referred to in (c) above where the person (not being a company or a registered firm) entitled to receive such income furnishes an affidavit or a statement (duly made before an M.P., M.L.A., member of a local authority, a gazetted officer or an officer of any banking co. of the rank of agent, sub-agent or manager declaring that this total income assessable for the next assessment year will be less than the minimum liable to income-tax-proviso to Sec. 194A (1).

(viii) No deduction u/s 194A shall be made in respect of interest payments to banks, insurance companies, statutory financial corporations, Unit Trust of India, L.I.C. & other notified institutions.

(ix) The provisions of Sec. 194A do not apply to payment or crediting of interest to partners by a firm or in cases of co-operative societies *interse*.

(e) In the case of any payment to a non-company non-resident, income-tax at the *rates in force* is to be deducted —Sec. 195 (1).

(f) A person responsible for paying any other sum to a non-resident may make an application to the I.T.O. to determine the sum chargeable to tax in a case where he considers that the whole payment may not be liable to tax in the hands of the recipient—Sec. 195 (2).

(g) *The rates in force in F.Y. 1968-69 are given below* :—

Rates in force for deduction of tax at source in certain cases. (Part II of I Schedule to Finance Act, 1968) :

	Income-tax	
	Rate of I.T.	Rate of Surcharge
1. In the case of a person other than a company—		
(a) Where the person is resident,		
(i) on income from interest (other than interest on securities)	10%	Nil
(ii) On any other income (excluding interest payable on a tax-free security) :	20%	2%
(b) where the person is not resident in India—		
(i) on the whole income (excluding interest payable on a tax-free Security) :	30% or I. T. and sur-charge on I. T. in respect of the income at the rates prescribed in Paragraph A of Part III of this Schedule, if such income had been the total income, whichever is higher.	3%
(ii) on the income from interest payable on a tax-free Security ;	15%	1·5%
2. In the case of a company—		
(a) where the company is a domestic company—		

(i)	on income by way of interest other than int. on securities	20%	Nil
(ii)	on any other income (excluding interest payable on any tax-free Security) ;	22%	Nil
(b)	where the company is not a domestic company—		
(i)	on the income from dividends payable by an Indian company as is referred to in Sec. 80M(1) (a)(i).	14%	Nil
(ii)	on the income from dividends payable by any other domestic company.	24·5%	Nil
(iii)	on the income from royalties payable by an Indian concern in pursuance of an agreement which is made by it with the Indian concern on or after the 1st day of April, 1961, and which has been approved by the Central Government ;	50%	Nil
(iv)	on the income from fees for rendering technical services received from an Indian concern in pursuance of an agreement made by it with the Indian concern after the 29th day of February, 1964, and which has been approved by the Central Govt. ;	50%	Nil
(v)	on the income from interest payable on a tax-free security : and	44%	Nil
(vi)	on any other income	70%	Nil

(h) The I.T.O. shall, on an application made by the assessee to the effect that tax should be deducted at a lower rate in his case, give to him such certificate as may be appro-

priate whereupon either no tax shall be deducted or tax at a lower rate shall be deducted at source.—Sec. 197.

(i) At the time of making the provisional or regular assessment, credit for the tax deducted at source is given to the person from whose income the tax has been deducted. In case of excess deduction, a refund will be made.—Sec. 199.

(j) Normally the tax deducted at source must be paid to the credit of the Central Government within one week from the date of deduction unless otherwise provided by the I.T.O. In the case of deduction of income-tax u/s 194A, it should be deposited within 7 days of the last day of the month during which the tax was deducted. In case of interest credited to the a/c of the payee, tax should be deducted and paid within 2 months of the last day of the accounting period. Failure to deduct and pay tax within the stipulated time without sufficient reasons may entail penalty and prosecution proceedings against the person concerned besides interest being levied @ 9% p.a. in respect of the tax due.—Secs. 200 & 201.

(k) Every person deducting tax in accordance with the provisions of sections 192 to 195 has to grant a certificate of deduction of tax at the time of such payment in the prescribed form—Sec. 203 and Rule 31.

(l) The person responsible for paying the salary is required under Rule 32 to send, a detailed monthly return in Form No. 21 to the I.T.O. Where the Commissioner waives this requirement, a certificate in Form No. 23 has to be furnished to the I.T.O. immediately after the end of each month. In the case of an employee leaving service, the particulars in Form No. 21 have to be sent forthwith to the I.T.O. Rule 35 requires that the return to be delivered to the I.T.O. u/s 206 (1) within 30 days from the 31st March in each year shall be prepared in Form No. 24. It has to contain particulars of salary income which is Rs. 600 less than the maximum amount exempt from tax. Other persons have also to file prescribed returns before the I.T.O.

PROBLEM No. 82.

The following are the particulars about a married employee with 8 children for the financial year 1968-69 :—

Basic salary	...	Rs. 3,000 p.m.
Value of rent-free unfurnished house	...	,, 300 p.m.
P. F. contribution by employer to R. P. F. @	...	8%
P. F. contribution by employee to R. P. F. @	...	8%
L. I. P. paid on his own life	...	,, 3,000
L. I. P. paid on his wife's life	...	,, 1,000

Calculate the monthly deduction of income-tax.

SOLUTION.

		Rs.
The tax will be calculated as under :—		
Basic salary—3,000×12	...	36,000
Value of rent-free accommodation 300×12	...	3,600
Gross Salary	...	39,600

Less : Deduction for P. F. Contribution and L. I. P. under section 80C :

P.F. Contribution by employee=8% of 36,000	Rs. 2,880		
L.I.P. on his own life	Rs. 3,000		
L.I.P. on his wife's life	Rs. 1,000		
	Rs. 6,880		
60% of the first Rs. 5,000		Rs. 3,000	
50% of the next Rs. 1,880		Rs. 940	
			Rs. 3,940
Taxable Salary			35,660
I.T. on the first Rs. 30,000 at scheduled rates			5,760
I.T. on the next Rs. 5,660 @ 50%			2,830
Total I.T.			8,590
Spl. S. C. @ 10% on 8,590			859
			9,449

The monthly deduction of tax will be $\frac{\text{Rs. } 9,449}{12}$

i.e., Rs. 787·41 or Rs. 787.

PROBLEM No. 83.

Find out the tax to be deducted at source u/ss. 193 to 195 of the Act in the following cases :—

(1) Income from interest on securities ... Rs. 5,000
(2) Income from tax-free Central Government securities ... Rs. 10,000
(3) Payment to a non-company non-resident ... Rs. 1,000
(4) Dividends payable to a Company ... Rs. 2,000
(5) Interest on bank deposits of Mr. A. ... Rs. 3,000

SOLUTION.

The amount of tax to be deducted at source in the cases mentioned in the question are as follows :—

(1) Income-tax @ 20% i.e., Rs. 1,000 plus a surcharge @ 2% i.e., Rs. 100—Total tax being Rs. 1,100.

(2) Nil as per Part II of the I Schedule to the Finance Act, 1968.

(3) Income-tax @ 30% on Rs. 1,000 ...Rs. 300
Surcharge @ 3% ,, ... 30
330

(4) I. T. @ 22% on Rs. 2,000 Rs. 400
(5) I. T. @ 10% i.e., Rs. 300

B. Advance Payment of Tax—Sections 207 to 219.

4. Introduction.

There are special provisions in the Act enabling the I.T.O. to collect the tax in advance by instalments in the financial year preceding the assessment year *at the rates applicable to the year of collection.* This provision is known as *pay-as-you-earn* (or PAYE) scheme also because the tax is collected as and when the income is being earned.

5. Detailed provisions.

The following provisions are applicable to advance payment of tax :—

(a) This scheme is applicable to all kinds of *income except "Capital gains"*.

(b) Advance tax is payable only when the *assessee's total income*, as per the *latest completed regular assessment exceeds the non-taxable limit by Rs. 2,500*, i.e., if it exceeds Rs. 6,500 (4,000+2,500) in case of unmarried individuals and unregistered firms and for HUFs not entitled to a higher exemption limit of Rs. 7,000 or Rs. 9,500 in the case of Hindu undivided families entitled to higher exemption limit. The total income of the latest completed regular assessment would be substituted by the total income on the basis of which tax has been paid u/s 140A or the provisional assessment has been made u/s 141, whichever relates to the latest previous year. These provisions were, inserted by the Direct Taxes (Amendment) Act, 1964.

(c) Income-tax is to be calculated on all income excluding capital gains at the rates given in Part III of Finance Act, 1968. It is then reduced by the amount of income-tax which would be deductible during the said financial year in accordance with the provisions of sections 192 to 195 on any income included in the said total income.

(d) The advance tax is normally *payable in quarterly instalments on* 1st June, 1st September, 1st December and 1st March of the financial year concerned. Where the accounting year ends after the 31st December, it shall be payable in 3 equal instalments on 1st September, 1st Dec., and the 15th March respectively.

(e) If the total income determined in the *latest completed regular assessment* exceeds the limits laid down, the I.T.O. would adopt that figure as the total income for determining the advance tax payable and make an order u/s 210. It tax is paid by the assessee u/s 140A or a regular or provisional assessment is made after the

making of such an order before the 15th Feb., of the financial year, the I.T.O. would substitute the total income on which tax has been paid u/s 140A or in respect of which the regular or provisional assessment as aforesaid has been made and make an amended order.

(f) If the tax-payer considers that his total income would be less than that adopted by the I.T.O. he may *file his own estimate* u/s 212 and pay tax accordingly. A margin of 25% is allowed as error of approximation in such a case.

(g) If at the time of regular assessment it is found that the tax paid according to the estimate is below 75% of the actual tax payable on the income assessed, then interest at 9% p.a. from 1st April next to the date of regular or provisional assessment or payment of tax in any other case will be charged upon the difference with the further liability to penalty if the I.T.O. finds that the assessee had *deliberately under-estimated* the tax payable by him.

(h) In the case of person previously assessed to tax it is the I.T.O., who makes an order for advance payment of tax ; but if a person has not been previously assessed, he must voluntarily make advance payment of tax before 1st March if his total income assessable for the next financial year is likely to exceed the limit laid down above.

(i) Interest is payable by Government on the advance deposit only when the tax paid in advance exceeds the actual tax determined at the time of regular assessment. In that event, interest at 9% p.a. from the first April next following the said financial year to the date of the regular assessment will be allowed on the excess only.

PROBLEM No. 84.

During the financial year 1967-68 (A.Y. 1968-69) Mr. X pays Rs. 11,000 as advance tax as per his estimate of income for the

previous year ended 31st December, 1967. On regular assessment completed on 30th June, 1968 the tax eventually assessed comes to say Rs. 20,000. Calculate the interest payable by him u/s 215 of the I.T. Act.

SOLUTION.

Interest u/s 215 shall be payable on 75% of Rs. 20,000 less Rs. 11,000, i.e., on Rs. 15,000—11,000 i.e., on Rs. 4,000 @ 9% from 1.4.68 to 30.6.68 which will be Rs. 90.

(C) Direct payment in normal course—Section 191.

6. As described earlier, on the completion of an assessment u/s 143 or 144 the I.T.O. serves upon the assessee a *notice of demand* specifying the amount of income-tax payable and the date by which the payment is to be made. Proper credit is given for any sums deducted at source or paid in advance and adjustment is made accordingly. Besides, tax is also payable in case of self assessment u/s 140A and provisional assessment u/s 141.

7. Annuity Deposits—Sections 280A—280X.

The Finance Act, 1964 has added a new chapter XXIIA (ss. 280A—280X) to the I.T. Act, 1961 regarding annuity deposits. The provisions relating to annuity deposit as contained in sections 280 A—280 X and the Annuity Deposit Scheme, 1964 as amended up-to-date are briefly stated as under :—

(1) The annuity deposit scheme was applicable to residents only. Besides, it applies only upto the A.Y. 1968-69. The Finance Act, 1968 has abolished this scheme w.e.f. the A.Y. 1969-70.

Only the following persons are liable to pay annuity deposits :—

(i) An individual, who is citizen of India,

(ii) a Hindu undivided family, (iii) an unregistered firm, (iv) an association of persons or a body of individuals

whether incorporated or not (other than a company or a co-operative society), and (v) an artificial juridical person.

It, therefore, follows that annuity deposit is not payable by a company, local authority, or a registered firm. Annuity deposit was required to be made compulsorily in respect of A.Y. 1964-65 and subsequent assessment years.

The Finance Act, 1966 had provided that a person whose total income chargeable to tax for the A.Y. 1967-68 is Rs. 25,000 (reduced to Rs. 15,000 again for A.Y. 1968-69) or less or who is over 70 years of age will not be required to make any annuity deposit (or advance deposit) in relation to any such assessment year. The age limit of 70 has been reduced to 60 years for ths A.Y. 1968-69.

(2) Assessees were also required to make deposits in advance in each financial year in respect of the income assessable for the assessment year next following that financial year. Such deposits were to be made at any time before the end of the financial year.

(3) The amount of annuity deposit is to be calculated to the nearest Rs. 10 on the adjusted total income of an assessee at the rates prescribed in the II Schedule to the Finance Act, 1968 viz.,

on Total Income				*of adjusted total income*
Up to Rs. 15,000				nil
Exceeding Rs. 15,000	but-upto	Rs. 20,000	@	6%
,, Rs. 20,000	,,	Rs. 40,000	@	9%
,, Rs. 40,000	,,	Rs. 70,000	@	12%
,, Rs. 70,000			@	15%

The 'total income' for the above purpose will be calculated without making any allowance for annuity deposit u/s 280O as stated in (6) below—Expln. to Sec. 280A.

(4) The term "adjusted total income" means the total income reduced by (a) arrears of salaries, (b) balances in a provident fund transferred to the credit of an employee

participating in a recognised provident fund, (c) share of income from an unregistered firm or an association of persons where such firm or association is liable to make an annuity deposit, (d) any compensation etc. u/s 28(ii), (e) any capital gains u/s 45, (f) any annuity due or commuted value of any annuity paid u/s 280D and (g) any income arising in a foreign country, the laws of which prohibit or restrict the transfer of remittance of money to India.

(5) Annuity deposits will be repayable to assessees in 10 equated annual instalments together with interest thereon at the rate or rates notified by the Central Govt. in the Official Gazette which at present is approximately $4\frac{1}{2}\%$ p.a. The payment of annuity shall commence after the expiry of one year from the date of deposit.

(6) The amount of the annuity deposit which an assessee is liable to make for an assessment year will be allowed as a deduction in computing his total income by the I.T.O. for that assessment year. The amount of annuity due to a depositor, in any year will be included in his total income for that year. Excess payment of A.D. can be adjusted in later year or years.

(7) For the A.Y. 1964-65 annuity deposits should have been made either at the time of making payment of tax u/s 140A or latest by the 31st October, 1964 and in same cases by 31.3.65. For the A.Y. 1966-67 annuity deposits should be made within 30 days of the filing of return if tax has to be paid on self assessment u/s 140A or when the demand is made by the I.T.O.

(8) A.D. is to be paid at the deposit office only.

"Deposit Office" means=

(i) any office of the Reserve Bank of India at Bombay (Fort and Byculla), Calcutta, New Delhi, Madras, Bangalore and Nagpur ;

(ii) any branch within India of the State Bank of India or any of its subsidiary banks ;

(iii) any other office authorised by the Central Govt. to accept annuity deposits.

(9) Every person required to make annuity deposit shall make such deposit at any deposit office either in cash or by cheque drawn in favour of that deposit office along with an application in Form A (under Annuity Deposit Scheme, 1966) or as near thereto as may be. Where the depositor is a firm or an association of persons or a body of individuals the application should be accompanied by a declaration in respect of its constitution in Form C. On receipt of an application together with the amount of deposit, the deposit office would issue a receipt in Form D to the depositor specifying the date on or after which the receipt may be surrendered in exchange for Annuity Deposit Certificate. On the depositor surrendering the receipt duly discharged the deposit office would deliver to the depositor the Annuity Deposit Certificate. A depositor can also arrange to keep them in the safe custody of the Public Debt office. Every depositor should send to the I.T.O. the counterfoil of each Annuity Deposit Certificate issued to him together with a statement in Form E along with the Return of Income to claim deduction in respect thereof.

(10) In deducting tax at source from salary income the calculation had to be made after deducting from such income the amount of such deposit which the assessee was liable to make irrespective of the fact whether he actually made it or not.

(11) If annuity deposits are not made within due time the assessee will be liable to penalty not exceeding 50% of the amount which he is liable to deposit.

(12) The Finance Act, 1966 had removed the provisions for exercise of option for non-payment of Annuity Deposit. It has enabled a depositor to deposit any amount of his choice up to the ceiling amount calculated at the specified rate. He will get the benefit of a deduction in the computation of his taxable income, only for the actual amount deposited, up to the ceiling amount. If there is any shortfall in the deposit from the

ceiling amount the depositor will be liable to pay the additional amount as penal tax, calculated only with reference to the shortfall. The amouut of penal tax is equal to 50% of the net cash saved by him (i.e., Annuity Deposit not paid less additional tax payable).

In the case of persons whose total income exceeds Rs. 25,000 by a small amount, a provision of marginal relief has been made by the Finance Act, 1966. Where such a person chooses not to make the deposit or makes a short deposit the penal tax will be computed with reference only to the amount by which his total income exceeds Rs. 25,000.

For the A. Y. 1968-69 anly, A. D. is payable on a total income exceeding Rs. 15,000. The rate of minimum A. D. or compulsory A. D. is 1% of the total income where the total income is between Rs. 15,000 and Rs. 20,000 subject to a marginal relief, viz., the A. D. cannot exceed 50% of the income by which the total income exceeds Rs. 15,000. The same is reached when the T. I. is Rs. 15,300. The rate of compulsory A. D. is $1\frac{1}{2}$% of the total income where it is between Rs. 20,000 and Rs. 25,000. A. D. cannot exceed the total of—

(a) the A. D. payable on a total income of Rs. 20,000 1% i.e., Rs. 200 ; and

(b) the full sum by which the total income exceeds Rs. 20,000.

The Finance (No. 2) Act, 1967 has, w.e.f. A. Y. 1968-69, provided that no penal tax will be chargeable where the short fall in the deposit does not exceed (a) Rs. 100 or (b) 10% of the amount to be deposited, wnichever is greater.

8. Arrears of tax and recovery thereof—Sections 220-232.

(1) Any amount, otherwise than by way of advance tax specified as payable in a notice of demand u/s 156 shall be

paid within thirty five days of the service of the notice at the place and to the person mentioned in the notice. However, if the I.T.O. believes that it is detrimental to revenue to allow the full period of 35 days, he may, with the previous approval of the I.A.C., ask the assessee to pay the demand within such period (less than 35 days aforesaid) as may be specified by him in the notice of demand. If the demand is not paid within the time mentioned above, the assessee shall be liable to pay simple interest at 9% p.a. from the day commencing after the end of the period mentioned earlier. However, the I.T.O. may extend the time of payment, if an application is received before the expiry of such period. If the assessee does not pay the demand within the period or extended period he shall be deemed to be an assessee in default. In such a case, the assessee shall further be liable to a penalty which may be increased from time to time so however, that total amount of penalty does not exceed the amount of tax in arrears.

(2) When an assessee is in default or is deemed to be in default in making a payment of tax, the I.T.O. may forward to the Tax Recovery Officer a certificate under his signature speciying the amount of arrears due from the assessee, and the Tax Recovery Officer on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein by one or more of the modes mentioned below, in accordance with the detailed rules laid in the Second Schedule to the Act :—

(a) Attachment and sale of the assessee's movable or immovable property ;

(b) arrest of the assessee and his detention in prison :

(c) appointing a receiver for the management of the assessee's movable and immovable properties.

No such proceedings shall be commenced after the expiry of one year from the last day of the financial year in which the demand is made or the assessee is deemed to be in default.

(3) Notwithstanding the issue of a certificate to the Tax Recovery Officer u/s 222, the I.T.O. may recover the tax due from such an assessee from his 'Salary' ;

(b) Requiring any of the debtors of assessee to pay to the I.T.O. such sums as he may require towards arrears of tax ;

(c) Applying to the court in whose custody there is money belonging to the assessee for payment to him of the entire amount sufficient to discharge the tax ; or

(d) by distraint and sale of movable and immovable property if duly authorised by the Commissioner.

9. Tax Clearance Certificate (for leaving India) —Sec. 230.

It is provided that no person shall be permitted to leave India either by land, air or sea, unless he obtains a tax clearance certificate or an exemption certificate from any one of the Income-tax Officers (Foreign Section) who may be appointed from time to time. This is meant to secure that payment of tax is not evaded by any person liable under the Wealth Tax Act, Expenditure Tax Act, Gift Tax Act, Income-tax Act, etc., leaving the territory of India without settling his tax dues. Persons of Indian domicile and any other persons who are already assessed should make the application in the prescribed form to the I.T.O. within whose jurisdiction they reside or by whom they are assessed. The I.T.O. will give an authorisation form which can be exchanged for a clearance certificate or exemption certificate from the I.T.O. (Foreign Section). Those who are of *non-Indian domicile not already assessed to Indian Income-tax* should apply directly to one of the I.T.O.s (Foreign Section).

It is the responsibility of steamship and airline companies to satisfy themselves that their passengers are in possession of tax clearance or exemption certificates. If they fail to check up this and allow any person to travel without such certificates, they will be held liable to pay the tax payable by the passenger.

There are certain categories of persons who have been *exempted* from producing such certificates.

10. Tax Clearance Certificates (for Registration purposes) —Sec. 230A.

The Direct Taxes (Amendment) Act, 1964 has inserted a new s. 230A in the I.T. Act. This prohibits a registering authority appointed under the Indian Registration Act, 1908, from registering any document purporting to transfer, assign, limit or extinguish the right, title or interest of any assessee to or in any property (other than agricultural land) valued at more than Rs. 50,000 unless the assessee concerned produces before such authority a tax clearance certificate from the I.T.O. in respect of his liability under the I.T. Act, 1961, the E.P.T. Act, 1940, the B.P.T. Act, 1947, the Indian I.T. Act, 1922, the W.T. Act, 1957 and the G.T. Act, 1958. This provision applies to documents which are required to be registered under s. 17 (1)(a) to (e) of the Indian Registration Act, 1908.

Questions.

Q. 1. Write short notes :—
(1) Advance payment of tax.
(2) Deduction of tax at source.
(3) Tax Clearance Certificate.
(4) New provisions regarding deduction of tax at source from interest etc.

Ans. See (1) Paras 4 & 5.
(2) Paras 2 & 3.
(3) Para. 9.
(4) Para. 3 (c).

Q. 2. Write a short note on the various modes of recovery of arrears of tax.

Ans. See para. 8.

Q. 3. Write a short note on annuity deposits.

Ans. See para. 7.

Q. 4. Write a short note on Tax Clearance Certificate for registration of immovable property in some cases.

Ans. See para. 10.

CHAPTER XXII

REFUNDS [Sections 237 to 245]

1. Origin of refunds.—Sec. 237.

If any person satisfies the Income-tax Officer that the amount of tax paid by him or on his behalf or treated as paid by him or on his behalf for any assessment year exceeds the amount with which he is properly chargeable under this Act for that year, he shall be entitled to a refund of the excess.

2. Persons entitled to claim refund in certain special cases—Sec. 283.

(1) Where the income of the person is included under any provision of this Act in the total income of any other persons (e.g., u/ss. 60, 61, 64 etc.,), the latter alone shall be entitled to a refund under these sections in respect of such income.

(2) Where through death, incapacity, insolvency, liquidation or other cause, a person is unable to claim or receive any refund due to him, his legal representative or the trustee or guardian or receiver as the case may be, shall be entitled to claim or receive such refund for the benefit of such person or his estate.

3. Form of claim for refund and limitation—Sec. 239.

Every claim under these sections shall be made in the prescribed Form No. 30 obtainable from the Income-tax Officer and verified in the prescribed manner. Such a claim must be made within **four years** from the last day of the assessment year in which the income in respect of which the claim is made was assessable for the A.Y. 1967-68 & earlier years. It is three years for A.Y. 1968-69 and two years for A.Y. 1969-70 and onwards.

4. Refund on Appeal—Sec. 240.

Where, as a result of any order passed in appeal or other proceeding under this Act, refund of any amount becomes due

to an assessee, the I.T.O. shall, except as otherwise provided in this Act, refund the amount to the assessee without his having to make any claim in that behalf.

5. Power to withhold refund in certain cases—Sec. 241.

Where an order giving rise to a refund is the subject matter of an appeal or further proceeding or where any other proceeding under this Act is pending, and the Income-tax Officer is of the opinion that the grant of the refund is likely to adversely affect the revenue, the I.T.O. may, with the previous approval of the Commissioner, withhold the refund till such time as the Commissioner may determine.

6. Correctness of assessment not to be questioned. —Sec. 242.

In a claim under these sections of Chapter XIX of the Income-tax Act, 1961, it is not open to the assessee to question the correctness of any assessment or other matter decided which has become final and conclusive to ask for a review of the same, and the assessee shall not be entitled to any relief on such claim except refund of tax wrongly paid or paid in excess.

7. Interest on belated refunds.—Sec. 243.

If the I.T.O. does not grant the refund,

(a) in any case where total income does not consist solely of income from interest on securities or dividends within **three months** from the date on which the total income is determined under this Act, and

(b) in any other case within **six months** (i.e., in a case where the Total Income of the assessee consists solely of income from interest on securities or dividends) from the date on which the claim for refund is made under this Chapter,

the Central Government shall pay the assessee **simple interest at 9%** per annum on the amount directed to be refunded from the date immediately following the expiry of three months or six months aforesaid, as the case may be, to the date of the order granting the refund.

Explanation—If the delay in granting the refund within the period of six months aforesaid is attributable to the assessee, whether wholly or in part, the period of the delay attributable to him shall be excluded from the period for which interest is payable. And where any question arises as to the period to be excluded for the purposes of calculation of interest under the provisions of this section, such question shall be determined by the Commissioner whose decision shall be final.

8. **Interest on refund where no claim is needed—Sec. 244.**

(1) Where a refund is due to an assessee in pursuance of an order referred to in para. 4 above and the I.T.O. does not grant the refund within a period of six months from the date of such order, the Central Government is required to pay to the assessee simple interest at 9% p.a. on the amount of refund due from the date immediately following the expiry of the period of six months aforesaid to the date on which the refund is granted.

(2) Where a refund as withheld under the provisions of section 241, the Central Government shall pay interest at the aforesaid rate on the amount of refund ultimately determined to be due as a result of the appeal or further proceeding for the period commencing after the expiry of six months from the date of the order referred to in Sec. 241 above, to the date the refund is granted.

9. **Set-off of refund against tax remaining payable—Sec. 245.**

Where under any of the provisions of this Act, a refund is found to be due to any person, the I.T.O., I.A.C. or Commissioner, as the case may be, in lieu of payment of the refund, set off the amount, against the sum, if any remaining payable under this Act by the person to whom the refund is due, after giving an intimation in writing to such person of the action proposed to be taken under this section.

PROBLEM No. 85.

Calculate the amount of interest payable by the Central Government in the following cases :—

(i) Mr. Prashad files a claim of refund in respect of his income consisting of interest on securities and dividend on 2.4.68. The net refund payable is Rs. 1,200. The I.T.O. grants him refund on 2.10.68.

(ii) Mr. D files a claim of refund in respect of income from dividends only on 16.4.68. The net amount refundable is Rs. 2,000. He makes a delay of two months in giving the necessary proof regarding the source of investment. Ultimately the refund is granted to him, say on 16.2.69.

(iii) Mr. C files a claim of refund in respect of income consisting of interest on securities and income from house property, on 20.4.68. The I.T.O. makes an order granting the refund on 1.12.68. The refund is ultimately granted for Rs. 800, say on 18.1.69.

(iv) A files a refund claim in respect of income from Salary, Dividends and Capital Gains on 1.5.68. The I.T.O. computes the total income on 12.5.68 and determines the net amount of refund at Rs. 600. The Refund order is, however, granted to him on 12.10.68.

(v) As a result of A.A.C's order in appeal the amount of refund comes to Rs. 5,000. The date of appeal order is 8.4.68. The refund is granted to the assessee on 6.10.68.

SOLUTION.

(i) As the refund is made with six months of the claim, no interest is payable by the Central Government.

(ii) The period for payment of interest will start after six months plus two months (delay due to Mr. D) from 16.4.68. i.e., 16.12.68. As the refund is ultimately granted on 16.2.69., Mr. D. will be entitled to interest at 9% on Rs. 2,000 for two months which will come to Rs. 30.

(iii) In this case as the total income does not consist wholly of income from interest on securities and dividends, the date when the interest becomes payable is the period after the expiry of three months from the date of order of the Income-

tax Officer computing the total income. In this case the total income of Mr. C is determined on 1.12.68. The refund must be granted within three months from this date, otherwise the interest becomes payable. Here the refund has been so granted. Hence no interest is payable by the Central Government, even when the date of granting the refund is after the expiry of 6 months from the date of filing the return of income.

(iv) In this case the interest shall become payable after the expiry of three months from the date of order by the I.T.O. i.e., 3 months from 12.5.68. Refund should have been granted before 12.8.68. There is a delay of two months in the granting of refund ; hence the assessee shall be entitled to interest at 9% on Rs. 600 for two months, which will work out to Rs. 9 only.

(v) In this case as provided in Section 240, the I.T.O. should grant refund of his own accord within six months of the A.A.C's order, i.e., by 8.10.68. As the I.T.O. has granted the refund within this period, no interest is payable by the Central Government.

Questions.

Q. 1. Write a short note on refunds.

Ans. See paras. 1 to 9.

Q. 2. What are the provisions for the allowance of interest on belated refunds ?

Ans. See paras. 7 & 8.

Chapter XXIII

APPEALS & REVISION

[Sections 246 to 269]

1. Right of Appeal—Section 246.

The right of appeal against the orders of the I.T.O. under different sections like 104, 131, 143, 144, 146, 147, 150, 154, 155, 163, 170, 171, 185, 186, 201, 216, 221, 237, 270, 271, 272, 273 etc., is given only to the tax-payer and not to the Department. Therefore, the Department cannot go in appeal against any order of the I.T.O. to the Appellate Asstt. Commissioner. The various kinds of appeals permisible under the Act are given below.

2. Appeals to the Appellate Assistant Commissioner. —Sections 249 to 251.

In the first instance an appeal lies to him. An appeal should ordinarily be filed in Form No. 35 within 30 days of the service of a notice or order against which the appeal is to be preferred. At the hearing of the appeal, for which the A.A.C. will fix a date, the I.T.O. is also entitled to be heard either in person or by a representative. The A.A.C. may confirm, cancel, vary or set aside the order appealed against, but he shall not enhance an assessment or a penalty unless the appellant has had a reasonable opportunity of being heard.

3. Revision by Commissioner (C.I.T.)—Sections 263 to 264.

Where the stake involved is small, an assessee can apply to the C.I.T. within 1 year from the date of order passed by an authority subordinate to the C.I.T. The application must be accompanied with a fee of Rs. 25 only. The C.I.T. cannot revise it (a) until the time for appeal to the A.A.C. or Appellate Tribunal has expired or (b) where the order is pending on an appeal before the A.A.C. or the Appellate Tribunal if the assessee waives his right of appeal, the C.I.T.

may revise the order even before the expiry of the time for appeal. *The Commissioner's order is final.*

The C.I.T. can revise an order of the I.T.O. *on his own motion* also, subject of course to certain conditions. After making such enquiry as he thinks fit, he may pass such order thereon (not being an order prejudicial to the assessee) as he thinks fit.—Sec. 264.

Besides, it is provided that the C.I.T. may call for and examine the record of any proceeding, and if he considers that *an order passed by the I.T.O. is prejudicial to the interests of Revenue*, he may, after giving to the assessee an opportunity of being heard and after making such enquiry as he deems necessary, pass such orders thereon as the circumstances of the case justify (including an order enhancing the assessment)—Sec. 263. No such order will be passed to revise an order of reassessment made u/s 147, or after the expiry of two years from the date of the order sought to be revised. An assessee adversely affected by such an order,may appeal to the Appellate Tribunal within 60 days from the date on which the order is communicated to him.

4. Appeals to Appellate Tribunal (A.T.) —Sections 252 to 255.

A further appeal lies to the Appellate Tribunal against the order of the A.A.C. u/s 101, 250 or 271, or I.A.C. u/s 131 or 274 (2) or C.I.T. u/s 263. This right of appeal is given to the assessee as well as to the Income-tax Department. The C.I.T. may direct the I.T.O. to appeal to the Appellate Tribunal if he objects to the order passed by the A.A.C. The assessee is required to deposit *fee* of Rs. 100 before preferring an appeal to the Tribunal but no such fee is to be paid by the Department.

The period of limitation for appeal to the Appellate Tribunal is *60 days* from the date on which the order is communicated to the assessee or Commissioner.

Within 30 days of the receipt of the notice that an appeal has been filed before the A.T., the assessee or the

I.T.O. as the case may be, may file a memorandum of cross-objections.

An appeal to the Appellate Tribunal is to be presented in the *prescribed form* i.e., Form No. 36. The order passed by the Appellate Tribunal is *final on questions of fact only*.

Any dispute relating to valuation of a capital asset u/s 52 may be referred by the Tribunal to the valuers for arbitration.

5. Reference to High Court—Sections 256 to 260.

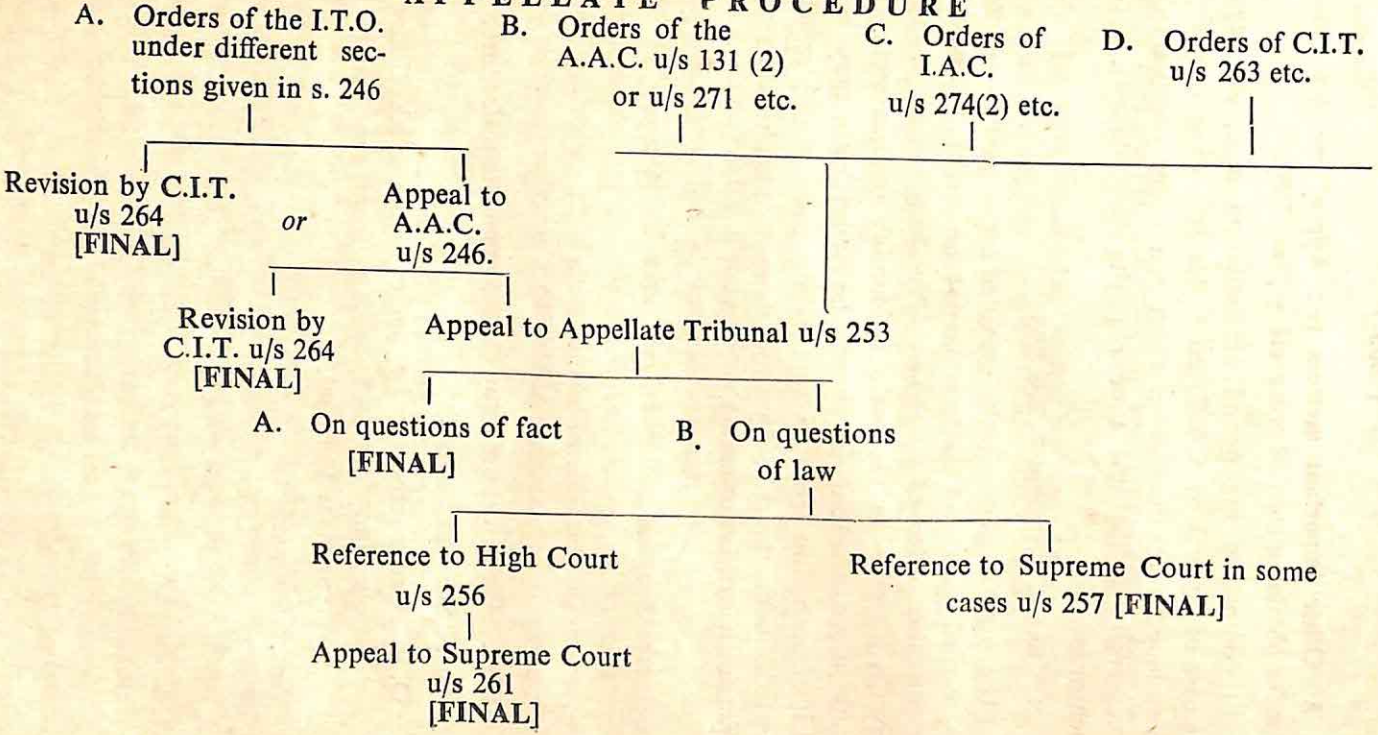
When either the assessee or the C.I.T. is aggrieved by the decision of the Appellate Tribunal involving *any question of law, a reference to the High Court* of the State concerned may be made. The period of limitation for making a referenc. application accompanied by a fee of Rs. 100 to the Tribunal for this purpose is *60 days*. The Tribunal has to draw up a statement of the case and refer to the High Court for its decision on the question of law raised within 120 days of the receipt of the application. If the Appellate Tribunal does not agree to state a case to the High Court, the assessee or the Department may make an application to the High Court praying for a direction to the Appellate Tribunal to state a case to the High Court. Where there is a conflict in the decisions of High Courts such cases can be referred direct to Supreme Court also.

On receipt of the statement of the case from the Appellate Tribunal the High Court or Supreme Court shall have to hear the case and to decide the question of law raised thereby. The case before the H. C. shall be heard by at least two judges.

6. Appeal to the Supreme Court—Sec. 261 and 262.

An appeal shall lie to the Supreme Court from a judgment of the High Court delivered on a reference made to it if the High Court certifies that the case is a fit one for appeal to the Supreme Court or when it refuses to state a case to the Supreme Court. The following chart illustrates the appellate procedure :

APPELLATE PROCEDURE



7. Other important matters re : Appeal etc. Exclusion of time for obtaining copy of order etc.—[Sec. 268].

In computing the period of limitation (e.g., 3o days in the case of appeal to A.A.C. etc) the following time should be excluded :—(a) the day on which the order complained of was served and (b) the time requisite for obtaining copy of such order.

8. Bar of Civil Suits—Sec. 293.

The Act has exhaustively provided for remedies which can be availed of by an assessee against an order of assessment or any other order of the I.T.O. No Suit can be brought in any Civil Court to set aside or modify an assessment order made under this Act. However, the High Court may issue a writ of prohibition etc. in appropriate cases when a remedy in barred under the I.T. Act or there is likelihood of undue injustice if writ is not issued.

Questions

Q. 1. Write a short essay on the appellate procedure.

Ans. See paras 1 to 6.

Q. 2. Can a reference be made to the High Court on a question of fact arising from the order of the Appellate Tribunal.

Ans. See para. 4.

APPENDIX I

CALCULATION OF TAX & ANNUITY DEPOSIT.

1. The Income-tax Act relates to income-tax only. It deals merely with the basis, the methods and the machinery of assessment. It does not contain a schedule of rates at which tax is to be charged. The rates of tax are determined by the Finance Act passed annually by the Parliament.

I For the A.Y. 1968-69.

2. Rates of Income-tax and Surcharges on Income tax :

The following rates of income-tax and surcharge on Income-tax have been prescribed by the Finance Act, 1968 :

(A) In the case of every individual or Hindu Undivided family or unregistered firm or other Association of Persons or Body of Individuals, whether incorporated or not, or every artificial juridical person the following rates of income-tax would apply :—

Rates of Income-tax

(1)	where the total income does not exceed Rs. 5,000/-	5% of the total income.
(2)	where the total income exceeds Rs. 5,000/- but does not exceed Rs. 10,000/-	Rs. 250 plus 10% of the amount by which the total income exceeds Rs. 5,000/-.
(3)	where the total income exceeds Rs. 10,000/- but does not exceed Rs. 15,000/-	Rs. 750 plus 15% of the amount by which the total income exceeds Rs. 10,000/-.
(4)	where the total income exceeds Rs. 15,000/- but does not exceed Rs. 20,000/-	Rs. 1,500/- plus 20% of the amount by which the total income exceeds Rs. 15,000/-.

(5) where the total income exceeds Rs. 20,000/- but does not exceed Rs. 25,000/-	Rs. 2,500/- plus 30% of the amount by which the total income exceeds Rs. 20,000/-.
(6) where the total income exceeds Rs. 25,000/- but does not exceed Rs. 30,000/-	Rs. 4,000/- plus 40% of the amount by which the total income exceeds Rs. 25,000/-.
(7) where the total income exceeds Rs. 30,000/- but does not exceed Rs. 50,000/-	Rs. 6,000/- plus 50% of the amount by which the total income exceeds Rs. 30,000/-.
(8) where the total income exceeds Rs. 50,000/- but does not exceed Rs. 70,000/-	Rs. 16,000/- plus 60% of the amount by which the total income exceeds Rs. 50,000/-.
(9) where the total income exceeds Rs. 70,000/-	Rs. 28,000/- plus 65% of the amount by which the total income exceeds Rs. 70,000/-.

Exemption limit :

Provided that for the purposes of this paragraph, in the case of a person, not being a non-resident—

(i) no income-tax shall be payable on a total income not exceeding the following limit, namely :—

(a) Rs. 7,000 in the case of every Hindu Undivided Family which as at the end of the previous year satisfies either of the following two conditions, namely :—

(i) that it has at least two members entitled to claim partition who are not less than 18 years of age ; or

(ii) that it has at least two members entitled to claim partition who are not lineally descended one from the other living member of the family ;

(b) 4,000 in every other case ;

Allowance for Marriage, dependent parents or children etc. :

(ii) where such person is an individual whose total income does not exceed Rs. 10,000 and who has, during the previous year, incurred any expenditure for the maintenance of any one or more of his parents or grand parents mainly dependent on him, the income-tax computed at the rate hereinbefore specified shall be reduced by so much of the amount specified hereunder, as does not exceed the amount of income-tax so computed :—

(a) Rs. 145...in the case of an unmarried individual ;

(b) Rs. 220...in the case of a married individual who has no child mainly dependent on him ;

(c) Rs. 240...in the case of a married individual who has one child mainly dependent on him ;

(d) Rs. 260...in the case of a married individual who has more than one child mainly dependent on him ;

(iii) where such person is an individual not falling under clause (ii) or a Hindu undivided family, the income-tax computed at the rate hereinbefore specified shall be reduced by so much of the amount specified hereunder, as does not exceed the amount of income-tax so computed :—

(a) Rs. 125...in the case of an unmarried individual ;

(b) Rs. 200...in the case of a married individual who has no child mainly dependent on him or a Hindu undivided family which has no minor coparcener ;

(c) Rs. 220...in the case of a married individual who has one child mainly dependent on him or a Hindu undivided family which has one minor coparcener mainly supported from the income of such family ;

(d) Rs. 240...in the case of a married individual who has more than one child mainly dependent on him or a Hindu undivided family which has more than one minor coparcener mainly supported from the income of such family ;

Marginal Relief

(iv) (A) where such person is an individual whose total income exceeds Rs. 10,000 but does not exceed Rs. 20,000, and who has, during the previous year, incurred any expenditure for the maintenance of any one or more of his parents or grand-parents mainly dependent on him, the income-tax payable by him in respect of such total income shall not exceed the aggregate of—

(1) the income-tax which would have been payable by the individual if his total income had been Rs. 10,000, and

(2) 40 per cent. of the amount by which the total income of the individual exceeds Rs. 10,000 ;

(B) where such person is not an individual whose case falls under sub-clause (A) and the total income of such person does not exceed Rs. 20,000, the income-tax payable thereon shall not exceed 40 per cent, of the amount by which the total income exceeds the limit specified in sub-clause (a) or, as the case may be, sub-clause (b) of clause (i) of this proviso.

Explanation :—For the purposes of clause (ii) and sub-clause (A) of clause (iv) of this proviso, a parent or grand-parent of an individual shall not be treated as being mainly dependent on such individual if the income of the parent or, as the case may be, the grand-parent from all sources in respect of the previous year relevant to the assessment year exceeds one thousand rupees.

Earned Income, Earned Income Relief and Surcharges :

The Finance (No. 2) Act, 1967 makes a distinction between income which are earned through personal exertion and those which are not so earned. Earned income belongs to those persons who both earn and own the income. Following points should carefully be borne in mind with regard to earned income :—

(1) The definition of 'earned income' as given in section 7 (iii) of the Finance act, 1965 provides the following three categories of earned income only, viz.,

(a) salaries.

(b) profits and gains of business or profession.

(c) income from other sources provided it is immediately derived from personal exertion or represents a pension or super-annuation or other allowance given to the assessee in respect of the past services of any deceased person or any annuity etc., due and chargeable u/s 56(2)(ia).

(2) The following units of assessment only are capable of having earned income :—

(a) Individual (b) Hindu undivided family ; (c) Unregistered firm ; and (d) Any other association of persons or body of individuals whether incorporated or not, not being a company, a local authority, registered firm etc.

(3) Earned income also includes the earned income of another person, if it is included in the assessee's income under the provisions of the Income-tax Act, 1961 (See Chapter XI) but does not include any such income on which income-tax is not payable u/s 86 (iii) or (v) or which is exempted under a Notification u/s 60 of the old Act, 1922. Upto 31st March, 1957, there was a provision for earned income relief for income-tax but not for super-tax. From the Finance (No. 2) Act, 1957 this system has been changed altogether. Now a standard schedule of rates of income-tax is applied to all incomes and a higher surcharge is imposed on unearned income and earned income above a particular amount. This means that a sort of earned income relief is now available, though in a different form, for income-tax till the A.Y. 1968-69.

Surcharges On Income-tax :

The amount of income-tax computed in accordance with the preceding provisions of this paragraph shall be increased by the aggregate of surcharges for purposes of the Union, which shall be calculated as specified hereunder :—

(a) Where—

(i) in the case of an individual or a Hindu undivided family, the amount of unearned income, not being income by way of interest on any security of the Central or State Government, or any income received in respect of Unit Trust of India included in the total income, or

(ii) in any other case, the amount of unearned income included in the total income,

exceeds Rs. 30,000,

a surcharge calculated on the difference between the amount of income-tax computed in respect of the income referred to in sub-clause (1) or, as the case may be, sub-clause (ii), if such income had been the total income and the amount of income-tax computed in respect of an income of Rs. 30,000 if it had been the total income, at the following rate, namely :—

(1)	where the amount of the difference does not exceed Rs. 10,000.	20 per cent. of the amount of such difference ;
(2)	where the amount of the difference exceeds Rs. 10,000.	Rs. 2,000 plus 25 per cent. of the amount by which the difference aforesaid exceeds Rs. 10,000 ;

(b) where—

(i) in the case of an individual or a Hindu undivided family, the earned income and income by way of interest on any security of the Central or State Government and income received in respect of units from the Unit Trust of India, established under the Unit Trust of India Act, 1963, included in the total income, or

(ii) in any other case, the earned income included in the total income,

exceeds Rs. 1 lakh,

a surcharge calculated on the amount of the difference between the income-tax computed in respect of the income referred to in sub-clause (i) or, as the case may be, sub-clause

(ii), if such income had been the total income and the income-tax computed in respect of a total income of Rs. 1 lakh, at the following rate, namely :—

(1)	where the amount of the difference does not exceed Rs. 65,000.	5 per cent. of the amount of such difference ;
(2)	where the amount of the difference exceeds Rs. 65,000 but does not exceed Rs. 1,30,000.	Rs. 3,250 plus 10 per cent. of the amount by which the difference aforesaid exceeds Rs. 65,000 ;
(3)	where the amount of the difference exceeds Rs. 1,30,000.	Rs. 9,750 plus 15 per cent. of the amount by which the difference aforesaid exceeds Rs. 1,30,000 ; and

(c) *a special surcharge* calculated at the rate of ten per cent., on the aggregate of the following amounts, namely :—

(i) the amount of income-tax computed in accordance with the preceeding provisions of this Paragraph ; and

(ii) the aggregate of the amounts of the surcharges calculated in accordance with clause (a) and clause (b) of this sub-paragraph.

N.B.—For the A.Y. 1968-69 there is no difference in the system of calculating tax on salary & non-salary income as the rates of tax as laid down by Finance Acts of 1967 & 1968 are the same.

Paragraph B

In the case of every co-operative society,—

Rates of income-tax.

(1)	where the total income does not exceed Rs. 5,000	5 per cent. of the total income ;
(2)	where the total income exceeds Rs. 5,000 but does not exceed Rs. 10,000	Rs. 250 plus 15 per cent. of the amount by which the total income exceeds Rs. 5,000 ;

(3) where the total income exceeds Rs. 10,000 but does not exceed Rs. 15,000	Rs. 750 plus 15 per cent. of the amount by which the total income exceeds Rs. 10,000 ;
(4) where the total income exceeds Rs. 15,000 but does not exceed Rs. 20,000	Rs. 1,500 plus 20 per cent. of the amount by which the total income exceeds Rs. 15,000 ;
(5) where the total income exceeds Rs. 20,000 but does not exceed Rs. 25,000	Rs. 2,500 plus 25 per cent. of the amount by which the total income exceeds Rs. 20,000 ;
(6) where the total income exceeds Rs. 25,000	Rs. 3,750 plus 41 per cent. of the amount by which the total income exceeds Rs. 25,000 ;

Provided that—

(i) no income-tax shall be payable on a total income not exceeding Rs. 4,000 ; and

(ii) where the total income is twenty thousand rupees or less, the income-tax payable shall not exceed forty per cent. of the amount by which the total income exceeds Rs. 4,000.

Surcharges on income-tax

The amount of income-tax computed at the rate hereinbefore specified shall be increased by the aggregate of surcharges for purposes of the Union calculated as specified hereunder :—

(a) where the total income exceeds Rs. 25,000, a surcharge calculated at the rate of $6\frac{1}{4}$ per cent. of the amount of the difference between the income-tax computed at the rates hereinbefore specified and the income-tax computed in respect of a total income of Rs. 25,000 ; and

(b) a special surcharge calculated at the rate of ten per cent. on the aggregate of the following amounts, namely :—

(i) the amount of income-tax computed at the rate hereinbefore specified ; and

(ii) the amount of the surcharge calculated in accordance with clause (a) of this sub-paragraph.

Paragraph C

In the case of every registered firm,—

Rates of income-tax

(1)	where the total income does not exceed Rs. 25,000	Nil ;
(2)	where the total income exceeds Rs. 25,000 but does not exceed Rs. 50,000	6 per cent. of the amount by which the total income exceeds Rs. 25,000 ;
(3)	where the total income exceeds Rs. 50,000 but does not exceed Rs. 1,00,000	Rs. 1,500 plus 8 per cent. of the amount by which the total income exceeds Rs. 50,000 ;
(4)	where the total income exceeds Rs. 1,00,000	Rs. 5,500 plus 12 per cent. of the amount by which the total income exceeds Rs. 1,00,000.

Surcharges on income-tax

The amount of income-tax computed at the rate hereinbefore specified shall be increased by the aggregate of surcharges for purposes of the Union calculated as specified hereunder :—

(a) In the case of a registered firm whose total income includes income derived from a profession carried on by it and the income so included is not less than fifty-one per cent. of such total income, a surcharge calculated at the rate of ten per cent. of the amount of income-tax computed at the rate hereinbefore specified ; and

(b) in the case of any other registered firm, a surcharge calculated at the rate of twenty per cent. of the amount of income-tax computed at the rate hereinbefore specified ; and

(c) a special surcharge calculated at the rate of ten per cent. on the aggregate of the following amounts, namely :—

(i) the amount of income-tax computed at the rate hereinbefore specified ; and

(ii) the amount of the surcharge calculated in accordance with clause (a), or, as the case may be, clause (b) of this sub-paragraph.

Paragraph D

In the case of every local authority,—

Rate of income-tax

On the whole of the total income ... ... 45 per cent.

Surcharges on income-tax

The amount of income-tax computed at the rate hereinbefore specified shall be increased by the aggregate of surcharges for purposes of the Union calculated as specified hereunder :—

(a) a surcharge calculated at the rate of ten per cent. of the amount of income-tax computed at the rate hereinbefore specified ; and

(b) a special surcharge calculated at the rate of ten per cent. on the aggregate of the following amounts, namely :—

(*i*) the amount of income-tax computed at the rate hereinbefore specified ; and

(*ii*) the amount of the surcharge calculated in accordance with clause (*a*) of this sub-paragraph.

Paragraph E

In the case of the Life Insurance Corporation of India established under the Life Insurance Act, 1956.—

Rates of income-tax

i)	on that part of its total income which consists of profits and gains from life insurance business	52·5 per cent.
(ii)	on the balance, if any, of the total income	the rate of income-tax applicable, in accordance with Paragraph F of this Part, to the total income of a domestic company which is a company in which the public are substantially interested.

Paragraph F

In the case of a company, other than the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956,—

Rates of income-tax

I. In the case of a domestic company—

(A)	(1) where the company is a company in which the public are substantially interested,—	
	(i) in a case where the total income does not exceed Rs. 50,000	45 per cent. of the total income ;
	(ii) in a case where the total income exceeds Rs. 50,000	55 per cent. of the total income ;
	(2) where the company is not a company in which the public are substantially interested,	
	(i) in the case of an industrial company—	

(1) on so much of the total income as does not exceed Rs. 10,00,000	55 per cent.
(2) on the balance, if any, of the total income.	60 per cent.
(ii) in any other case	65 per cent. of the total income ; and

(B) in addition, where the company is—

(i) a company in which the public are substantially interested, or

(ii) a company as is referred to in clause (iii) of sub-section (2) or clause (*a*) or clause (*b*) of sub-section (4) of section 104 of the Income-tax Act, or

(iii) such a company as is exempt from the operation of section 104 of the said Act by a notification issued under the provisions of sub-section (3) of that section,—

on so much of the total income as does not exceed the relevant amount of distribution of dividends by the company. 7·5 per cent.

Provided that the income-tax payable by a domestic company, being a company in which the public are substantially interested, the total income of which exceeds Rs. 50,000 shall not exceed the aggregate of—

(a) the income-tax which would have been payable by the company if its total income had been Rs. 50,000 (the income of Rs. 50,000 for this purpose being computed as if such income included income from various sources in the same proportion as the total income of the company) ; and

(b) 80 per cent. of the amount by which its total income exceeds Rs. 25,000.

Explanation 1.—In clause (B), the expression "the relevant amount of distributions of dividends" means the aggregate of the following amounts, namely :—

(a) the amount, if any, by which the "relevant amount of distributions of dividends" by the company as computed in accordance with *Explanation 1* to item I of Paragraph F of Part I of the First Schedule to the Finance Act, (No. 2) 1967 exceeds its total income (reduced by the amount of capital gains, if any, relating to capital assets other than short-term capital assets included therein) assessable for the assessment year commencing on the 1st day of April, 1967 ; and

(b) so much of the amount of the dividends, other than dividends on preference shares, declared or distributed by the company during the previous year as exceeds ten per cent. of its paid-up equity share capital as on the 1st day of the previous year.

Explanation 2.—For the purposes of clause (B), where a part of the income of a company is not included in its total income because it is agricultural income, the amount declared or distributed as dividends (other than dividends on preference shares) shall be deemed to be such proportion thereof as the sum specified in clause (a) bears to the sum specified in clause (b), such sums being—

(a) the average amount of the total income of the company of the five previous years in which it has been in receipt of taxable income immediately preceding the relevant previous year ; and

(b) the average amount of the total profits and gains (excluding capital receipts) of the company of the five previous years referred to in clause (a) reduced by such allowances as may be admissible under the Income-tax Act but which have not been taken into account by the company in its profit and loss accounts for the said five previous years.

Explanation 3.—For the removal of doubts, it is hereby declared that where any dividends were declared by the company before the commencement of the previous year and are distributed by it during that year, the amount of such dividends shall not be included in the amount of dividends referred to in clause (b) of *Explanation 1.*

II. In the case of a company other than a domestic company :—

(i)	on so much of the total income as consists of—	
(a)	royalties received from an Indian concern in pursuance of an agreement made by it with the Indian concern after the 31st day of March, 1961, or	
(b)	fees for rendering technical services received from an Indian concern in pursuance of an agreement made by it with the Indian concern after the 29th day of February, 1964,	
	and where such agreement has, in either case, been approved by the Central Government.	50 per cent.
(ii)	on the balance, if any, of the total income.	70 per cent.

3. **Rates of Annuity Deposits.**

The rates of annuity deposits as fixed by the Finance Act, 1968 are :—

(1)	In the case of any depositor whose total income does not exceed Rs. 15,000.	Nil.
(i)	in case of any depositor whose total income exceeds Rs. 15,000 but does not exceed Rs. 20,000.	6 per cent. of the adjusted total income :

Provided that the annuity deposit to be made shall in no case exceed half the amount by which the total income exceeds Rs. 15,000.

(iii)	In the case of a depositor whose total income exceeds Rs. 20,000 but does not exceed Rs. 40,000.	9 per cent. of the adjusted total income :

Provided that the annuity deposit to be made shall in no case exceed the aggregate of the following sums, namely :—

(a) an amount calculated at Six per cent. on so much of the adjusted total income as does not exceed Rs. 20,000 ;

(b) one-half of the amount by which the total income exceeds Rs. 20,000.

(iv)	In the case of depositor whose total income exceeds Rs. 40,000 ; but does not exceed Rs. 70,000	12 per cent. of the adjusted total income :

Provided that the annuity deposit to be made shall in no case exceed the aggregate of the following sums, namely :—

(a) an amount calculated at nine per cent. on so much of the adjusted total income as does not exceed Rs. 40,000 ;

(b) one-half of the amount by which the total income exceeds Rs. 40,000.

(v)	In the case of depositor whose total income exceeds Rs. 70,000.	15 per cent. of the adjusted total income :

Provided that the annuity deposit to be made shall in no case exceed the aggregate of the following sums, namely :—

(a) an amount calculated at twelve per cent. on so much of the adjusted total income as does not exceed Rs. 70,000 ;

(b) one-half of the amount by which the total income exceeds Rs. 70,000.

Explanation.—In the Schedule, "total income" means total income computed in the manner laid down in the Income-tax Act without making any allowance under section 280-O of that Act.

II. For the F.Y. 1968-69 (i.e., for the A.Y. 1969-70)

(a) Individuals, HUFs, URFs, AOPs, etc :

The levy of surcharges on Income-tax on unearned incomes above Rs. 30,000 and on the earned incomes above Rs. 1 lakh has been discontinued. But the rates of basis Income-tax on personal income above Rs. 1 lakh have been increased, viz., from the current rate of 65% to 70% on income in the slab of Rs. 1,00,001 and Rs. 2,50,000 and from 65% to 75% on the income in the slab over Rs. 2,50,000. The current special surcharge of 10% of Income-tax, will, however, be chargeable with the only difference that it will now simply be known as "surcharge". The Finance Minister has been very unkind to the married couples where both the husband and the wife have a taxable income. A resident married individual is currently entitled to tax relief of Rs. 82·50 (Rs. 75 for I.T.+10% Spl. S.C. thereon of Rs. 7. 50), even where his spouse has an independent taxable income. With effect from the A.Y. 1969-70 the married individual will not be

entitled to the said tax relief if the spouse of such an individual has a total income exceeding Rs. 4,000 in respect of the relevant year.

(b) Co-operative Societies :

The current levy of surcharge of $6\frac{1}{4}\%$ on Income-tax has been discontinued. The rate of I.T. has also been reduced from 41% to 40% in the income slab over Rs. 25,000. However, the existing special surcharge of 10% of the basis I.T. will continue to be levied but under the new name of "Surcharge."

(c) Local Authorities :

The basis rate of I.T. has been fixed at 50%, However, the existing special surcharge at the rate of 10% of the basic I.T. will continue to be levied but under the new name of "Surcharge".

(d) Companies :

There is no change in the Income-tax rate structure of companies except the abolition of the Income-tax @ $7\frac{1}{2}\%$ on dividend distributions in excess of 10% of the paid-up capital in the cese of certain companies.

(e) Registered Firms :

It has been provided that the Income-tax payable by a Registered Firm will be deducted from its total income for the purpose of allocation of the Firm's income for taxation in the hands of individual partners. The I.T. rates on a total income upto Rs. 50,000 are the same as for the A.Y. 1968-69. But the rates of basic I.T. on the total income of an R.F. above Rs. 50,000 have been increased. The rate of basic I.T. on the slab of income between Rs. 50,001-1,00,000 has been fixed at 12% as against the current rate of 8% and that on the slab of income over Rs. 1,00,000 at 20% as against the current rate of 12%. There is no change in the rates of surcharges on I.T. and special surcharge of 10% on I.T. and S.C. in comparison with the A.Y. 1968-69.

Computation of Assessment & Tax

The following successive steps are necessary in order to prepare the assessment of an assessee :—

(1) Compute the gross total income in the manner explained in Chapters V to XII of Part II. Add up the various amounts of tax already deducted or otherwise paid at source separately.

(2) Calculate the amount of income-tax chargeable on the total income (gross total income as reduced by annuity deposit if any, as explained in Ch. XXI earlier).

(3) Calculate the amount of average rate of income-tax.

(4) Ascertain the amount of income (included in total income) which is partially exempt from income-tax and work out the amount of income-tax rebate thereon at the average rate of income-tax.

(5) From the gross amount of income-tax as computed above, deduct the following amounts :—

(a) The amount of rebate or deduction on exempted income.

(b) The amount of tax already paid or deducted at source.

(c) The amount of Double taxation relief (if any) in respect of foreign income.

(d) The amount of tax paid in advance under section 210 or 212 and interest thereon (if any).

(e) The amount paid u/s 140A i.e., under self-assessment or u/s 141 i.e., provisional assessment.

(6) The balance will then be the net amount of tax payable or refundable. Add the amount of interest, if any, and thus arrive at the total amount payable or refundable.

Calculation of tax in different cases as per The Finance Act, 1968.

Note : Calculation of tax in all the following problems is for the assessment year 1968-69 only.

(A) **Resident Individuals :**

PROBLEM No. 86.

Calculate the income-tax payable by Mr. B, a married individual (without any child) on his income from salary amounting to Rs. 5,000 and property Rs. 4,000 i.e., on a total income of Rs. 9,000. He has maintained his old parents who have no separate source of income.

SOLUTION.

	Rs.
Income-tax on the first Rs. 5,000 at the slab rates	250
next Rs. 4,000 @ 10%	400
	650
Less : Deduction for married individual maintaining dependent parents	220
I.T.	430
Add : Special S.C. @ 10%	115
Total I.T. & Spl. S.C.	545

N.B. There is no difference in the method of calculation of tax on salary and non-salary income for A.Y. 1968-69.

PROBLEM No. 87.

Calculate the income-tax payable by Mr. C, a married individual with one child dependent on him in respect of his business income amounting to Rs. 16,000. His parents are dependent on him.

SOLUTION.

	Rs.
Business income	16,000
Less : Annuity Deposit @ 1%	160
Total income	15,840
Income-tax on the first Rs. 15,000 at the slab rates	1,500
,, next Rs. 840 @ 20%	168
	1,668

Less :	Deduction for married individual with 1 dependent child	220
	I.T.	1,448
Add :	Special S.C. @ 10%	145
	Total I.T. & Spl. S. C.	1,593

Note :—He will not get the extra I.T. benefit of Rs. 20/- for maintaining dependent parents as his total income exceeds Rs. 10,000

PROBLEM No. 88.

Calculate the income-tax and annuity deposit payable by Mr. D, a married individual with three children wholly dependent on him in respect of his income from Interest on Bank Deposit amounting to Rs. 19,000. He has paid Rs. 1,000 as L.I.P. on his own life.

SOLUTION.

	Interest on Govt. Securities ...	19,000
Less :	Deduction for L.I.P. @ 60% of Rs. 1,000	600
	Reduced total income	18,400
Less :	Annuity deposit payable @ 1%	180
	Total income	18,220
	Income-tax on the first Rs. 15,000 at slab rates	1,500
	,, next Rs. 3,220 @ 20%	644
		2,144
Less :	Deduction for married individual with more than one dependent child	240
	Income-tax	1,904
Add :	Special S. C. @ 10%	190
	Total I. T. & Spl. S. C.	2,094

N.B. No surcharge is payable in respect of unearned income upto Rs. 30,000.

PROBLEM No. 89.

Calculate the income-tax and annuity deposit payable by Mr. E, a married individual with more than one dependent child in respect of his income from property amounting to Rs. 80,000.

SOLUTION.

		Rs.
Income from property	...	80,000
Less : Annuity deposit @ 15% thereof		12,000
Total income	...	68,000

			Rs.
Gross Income-tax on Rs. 68,000 at slab rates			26,800
Less : Deduction for married individual with more than one dependent child			240
Income-tax on unearned income		...	26,560
Surcharge on 20800 (i.e. Rs. 26,560—5,760 tax on the first Rs. 30,000) :			
On the first Rs. 10,000		2,000	
On the next Rs. 10,800	@ 25%	2,700	4,700
Total I. T. & S. C.			31,260
Add : Special S. C.	@ 10%		3,126
Total I.T. & Surcharges			34,386

PROBLEM No. 90.

Mr. H is a married individual with more than one child dependent on him. His income from business is Rs. 3,98,000 He has paid L.I.P. on his and his wife's life amounting to Rs. 18,000. Calculate the income-tax, surcharges on income-tax & annuity deposit payable by him.

SOLUTION.

		Rs.
Income from business	...	3,98,000
Less : Deduction for L.I.P. of Rs. 15,000 (the maximum sum eligible for the purpose)		

	Rs.	Rs.
On the first Rs. 5,000 @ 60%	3,000	
On the next Rs. 10,000 @ 50%	5,000	8,000
		3,90,000
Less : Annuity deposit payable @ 15%		58,500
Total income		3,31,500

Income-tax on Rs. 3,31,500

I.T. on the first Rs. 70,000 at slab rates	28,000
I.T. on the balance of Rs. 2,61,500 @ 65%	1,69,975
Gross I.T.	1,97,975
Less : Deduction for married individual with more than one dependent child	240
I.T.	1,97,735

Surcharges on the I.T. of Rs. 1,97,735 :

	Rs.	
Gross I. T. ...	1,97,735	
Less : I.T. on the first Rs. 1 lakh as if it is total income (47,500—240)	47,260	
Difference ...	1,50,475	
S. C. on the first Rs. 1,30,000 of the difference ...	9,750	
S. C. on the next Rs. 20,475 @ 15%	3,071	
I.T.S.C. ...		12,821
I.T. & I.T.S.C.		2,10,556
Special S.C. @ 10%		21,056
Total I.T. & Surcharges		2,31,612

PROBLEM No. 91.

An individual with more than one child has the following income :—

		Rs.
Income from property	(Unearned)	10,000
Business income	(Earned)	50,000
Short-term capital gains	(Unearned)	20,000
Long-term capital gains regarding Shares	(Do)	30,000
Total Income		1,10,000

Calculate the tax payable by him.

SOLUTION.

The tax payable by him will be calculated as under :

		Total Income	1,10,000
Less : Standard deduction in respect of long-term Capital Gains only :	Rs.		
First Rs. 5,000 in full	5,000		
Next, 65% of balance Rs. 25,000	16,250		21,250
			88,750
Less : Annuity Deposit payable @ 15% on Rs. 60,000 (i.e., Gross Income of Rs. 1,10,000 less Capital Gains of Rs. 50,000 u/s 280B)			9,000
		Total Income	79,750

Computation of Earned and Unearned Income in Rs. 79,750 :-

Earned Income :—	Rs.		Rs.
Business Income	50,000		
Less : Annuity Deposit	9,000		41,000
Unearned Income :			
Income from Property	10,000		
Taxable Capital Gains whole of Short-term Capital Gains	Rs. 20,000		
Net Long-term Capital Gains Rs.	8,750	28,750	38,750
	Total Income	...	79,750
Income-tax on Rs. 79,750 (As per Table No. 13 and Formula No. 1 of Master Tax Ready-Reckoner 1968-69 Ed.)			34,105
Surcharge on I.T. on unearned Income (Rs. 38,750)			
I.T. on Rs. 38,750	10,135		
Less : I.T. on Rs. 30,000	5,760		
Difference	4,375		
Surcharge on I.T. on Unearned Income=20% of Rs. 4,375			875
		Total I.T. & S.C.	34,980
Add : Special Surcharge @ 10% thereof			3,498
		Total I.T., S.C. & Spl S.C.	38,478

PROBLEM No. 92.

What would be the annuity deposit and the total tax payable by a married individual with more than 1 dependent child on the following amounts of earned income :

	Rs.		Rs.		Rs.		Rs.
(1)	5,000	(6)	30,000	(11)	55,000	(16)	80,000
(2)	10,000	(7)	35,000	(12)	60,000	(17)	85,000
(3)	15,000	(8)	40,000	(13)	65,000	(18)	90,000
(4)	20,000	(9)	45,000	(14)	70,000	(19)	95,000
(5)	25,000	(10)	50,000	(15)	75,000	(20)	1,00,000

SOLUTION

S. No.	*Earned Income*	*Annuity Deposit*	*Total Income*	*I.T. & Spl. S.C. i.e., Total Tax*
	Rs.	Rs.	Rs.	Rs.
(1)	5,000	—	5,000	11
(2)	10,000	—	10,000	561
(3)	15,000	—	15,000	1,386
(4)	20,000	200	19,600	2,442
(5)	25,000	380	24,620	4,011
(6)	30,000	2,700	27,300	5,148
(7)	35,000	3,150	31,850	6,685
(8)	40,000	3,600	36,400	9,856
(9)	45,000	5,400	39,600	11,616
(10)	50,000	6,000	44,000	14,036
(11)	55,000	6,600	48,400	16,456
(12)	60,000	7,200	52,800	19,184
(13)	65,000	7,800	57,200	20,080
(14)	70,000	8,400	61,600	24,992
(15)	75,000	10,900	64,100	26,642
(16)	80,000	12,000	68,000	26,560
(17)	85,000	12,750	72,250	32,145
(18)	90,000	13,500	76,500	35,184
(19)	95,000	14,250	80,750	38,223
(20)	1,00,000	15,000	85,000	41,261

(B) Hindu undivided families :

PROBLEM No. 93.

Calculate the tax payable by M & Bros., a Hindu undivided family consisting of three adult co-parceners and two minor co-parceners on its income from business amounting to Rs. 8,000. It has paid Rs. 1,000 as L.I.P. on the life of its Karta.

SOLUTION.

		Rs.
	Income from business ...	8,000
Less :	Deduction for L.I.P. @ 60% on Rs. 1,000	600
	Total income	7,400
	Income tax on Rs. 7,400 as per the marginal relief (as it is exempt upto Rs. 7,000)	
	On Rs. 400 (Rs. 7,400—7,000) @ 40%	160
Add :	Special S. C. @ 10%	16
	Total Tax	176

PROBLEM No. 94.

N & Bros., A Hindu undivided family consisting of one minor co-parcener has income from property amounting to Rs. 50,000. Calculate the tax payable by it.

SOLUTION.

	Income from business.	50,000
Less :	Annuity deposit=12%	6,000
	Total income	44,000
I.T. on the	first Rs. 30,000 at different slab rates	6,000
,,	next Rs. 14,000 @ 50%	7,000
	Gross I.T.	13,000
Less :	Deduction for 1 co-parcener	220
	Net I.T.	12,780
Add :	Special S. C. @ 10%	1,278
	Total Tax	14,058

PROBLEM No. 95.

Calculate the tax payable by D & Sons, a Hindu undivided family (entitled to higher exemption limit of Rs. 7,000 and consisting of 8 co-parceners) on its income from business amounting to Rs. 80,000. It has paid L.I.P. of Rs. 40,000 on the life of its adult male members.

SOLUTION.

		Rs.
Income from business ...		80,000
Less : Deduction for L.I.P. (Maximum sum eligible is Rs. 30,000 or 30% of gross total income) i.e., 30% of 80,000=Rs. 24,000) :		
On the first Rs. 5,000 @ 60%	3,000	
„ next Rs. 19,000 @ 50%	8,500	11,500
Gross income		68,500
Less : Annuity Deposit @ 12%		8,220
Total income		60,280
I.T. on the first Rs. 50,000 at different slab rates		16,000
„ next Rs. 10,280 @ 60%		6,168
Gross I.T.		22,168
Less : Deduction for more than one co-parcener		240
Net I.T.		21,928
Add : Special S.C. @ 10% thereon		2,193
Total Tax		24,121

(C) Non-resident individuals :

PROBLEM No. 96.

Calculate the tax payable by Mr. P, a non-resident married individual on his Indian income (from business) of Rs. 30,000 and foreign income of Rs. 40,000.

SOLUTION.

Mr. P, a non-resident individual, is not required to pay any tax on his foreign income of Rs. 30,000. The old system of taxing a non-resident with reference to maximum rate or total world income has been abolished by an amendment of the I.T. Act by the Finance Act, 1965. He will be chargeable on tax on his Indan income at the rates fixed by the Finance Act, 1968 like an Indian resident with the only difference that he will not be entitled to any deduction for married individual etc. No annuity deposit is payable by a non-resident. Tax on Rs. 30,000 will be :—

	Rs.
I. T. on Rs. 30,000 at the slab rates	6,000
Add : Special S. C. @ 10%	600
Total Tax	6,600

(D) Unregistered firms, A. O. Ps. etc :

PROBLEM No. 97.

Calculate the tax payable by R & Co., an unregistered firm of four partners on its business income of Rs. 7,000.

SOLUTION.

	Rs.
I.T. on the first Rs. 5,000 of total income @ 5%	250
I.T. ,, next Rs. 2,000 ,, 10%	200
I.T.	450
Add : Special S.C. @ 10% thereon	45
Total Tax ...	495

N.B. : No further deduction from income-tax is permissible in the case of an unregistered firm.

PROBLEM No. 98.

Calculate the tax payable by S & Co., an association of six persons on its business income amounting to Rs. 50,000.

SOLUTION.

	Rs.
Income from business ...	50,000
Less : Annuity Deposit @ 12% ...	6,000
Total income	44,000
I.T. on the first Rs. 30,000 at slab rates	6,000
I.T. on the next Rs. 14,000 @ 50% ...	7,000
I.T.	13,000
Add : Special S.C. @ 10%	1,300
Total Tax	14,300

(E) Registered firms :

PROBLEM No. 99.

The income of T & Co., a registered firm of 8 partners, sharing profits and losses equally from business is Rs. 1,20,000. Calculate the tax payable by it. What will be amount entitled to rebate in the hands of each partner u/s 86 (iv).

SOLUTION.

	Rs.
Income-tax on the first Rs. 1,00,000 at slab rates	5,500
" " next Rs. 20,000 @ 12%	2,400
I.T.	7,900
S. C. @ 20% on Rs. 7,900 ...	1,580
Total I.T. & I.T.S.C.	9,480
Add : Special S.C. @ 10%	948
Total Tax	10,428

Each partner u/s 86 (iv) will be entitled to a rebate of tax at the average rate of tax applicable to his total income on the share of tax payable by the firm viz., 10,428÷8=Rs. 1,303·50 or Rs. 1,304.

PROBLEM No. 100.

The total income of M/s. U & Co., a registered firm consisting of four advocates as equal partners is as under :—

Income from property	...	20,000
Dividends (gross)	...	50,000
Income from profession	...	80,000
	Total income	1,50,000

Calculate the tax payable by the R. F.

SOLUTION

I.T. on the first Rs. 1,00,000 at slab rates	...	5,500
„ next Rs. 50,000 @ 12%	...	6,000
I.T.		11,500
S.C. @ 10% on Rs. 11,500 (as the income from profession is more than 50% of the total income)		1,150
I. T. & I. T. S. C.		12,650
Add Special S. C. @ 10%		1,265
Total Tax	...	13,915

(F) Companies :

PROBLEM No. 101.

Calculate the tax payable by V Co. Ltd., an Indian Company as is referred to in Sec. 108 of the I.T. Act on its business income of Rs. 24,000.

SOLUTION.

	Rs.
Net I.T. on Total income of Rs. 24,000 @ 45%	10,800

PROBLEM No. 102.

W. Co., Ltd. is an Indian Company as is referred to in Section 108 of the I.T. Act. Calculate the tax payable by the company on its income from house property amounting to Rs. 60,000.

SOLUTION.

This is a case of marginal relief.

	Rs.
I. T. payable on Rs. 50,000 as if it is total income @ 45%	22,500
Add: 80% of Rs. 10,000 (i.e., 60,000—50,000)	8,000
	30,500

N.B.—Under the regular rate of I.T. @ 55%the I.T. would have been Rs. 60,000×55%=33,000. Hence the lower of the two sums, viz. Rs. 30,500 would be payable by the company.

PROBLEM No. 103.

Calculate tax payable by Y (India) Pr. Ltd. on its total income of Rs. 12,00,000 from cotton manufacturing.

SOLUTION.

	Rs.
I.T. on the first Rs. 10,00,000 @ 55%	5,50,000
„ „ „ next Rs. 2,00,000 @ 60%	1,20,000
Total Tax	6,70,000

PROBLEM No. 104.

The total income of a domestic company in which the public are substantially interested is as under :—

		Rs.
Business income	...	1,00,000
Short-term capital gains	...	20,000
Long-term capital gains (shares)	...	30,000
Long-term capital gains (lands)	...	50,000
Total Income		2,00,000

Calculate the tax payable by it.

SOLUTION.

The income-tax payable by the company will be as under :—

	Rs.
I.T. on Rs. 1,00,000 Business income @ 55%	55,000
I.T. on Rs. 20,000 Short-term capital gains @ 55%	11,000

I.T. on Rs. 30,000 Long-term capital gains (shares) @ 30%	9,000
I. T. on Rs. 50,000 Long-term capital gains (lands) @ 40%	20,000
I. T. on Rs. 2,00,000 of total income ...	95,000

PROBLEM No. 105.

Calculate the tax payable by Z Co. Ltd., a foreign company with branch office in Calcutta which has not made the prescribed arrangements for the declaration and payment of dividends in India from the following particulars of its income :—

	Rs.
(1) Long-term capital gains on shares	1,00,000
(2) Business income ...	2,00,000
(3) Royalty from an Indian Concern in pursuance of an approved agreement dated 8. 9. 1962	3,00,000
(4) Technical service fees from an Indian Concern in pursuance of an agreement dated 9. 6. 1963	4,00,000

SOLUTION.

	Rs.
Total income ...	10,00,000
I. T. on Rs. 1,00,000 of capital gains @ 30%	30,000
I. T. on business income of Rs. 2,00,000 @ 70%	1,40,000
I. T. on Royalty income of Rs. 3,00,000 @ 50%	1,50,000
I. T. on Technical service fees of Rs. 4,00,000 @ 70% (as the agreement is made before 29-2-1964)	2,80,000
Total I. T.	6,00,000

APPENDIX II

Salient features of the Companies (Profits) Surtax Act, 1964.

1. General—This new Act has come into force from 1.4.1964. It imposes a special tax on companies (both Indian and Foreign) having share capital. The Act contains 26 sections and three schedules. The tax is imposed on the chargeable profits of companies diminished by a standard deduction. The various technical terms are explained below. The Act is being administered by the Income-tax Department but its proceedings relating to assessment, collection and revision and appeals are separate from that of income-tax. The return in respect of the net chargeable profits of a company is to be filed by the principal officer of every company by the 30th of September. The assessment procedure and the appellate procedure follow the pattern of the Income-tax Act. However, there is no system of advance payment of tax under this Act.

2. Chargeable Profits—The computation of surtax is directly related to the chargeable profits of the company in the same way as the computation of income-tax is related to the total income under the Income-tax Act. However, the term "Chargeable Profits" is not the same thing as the total income computed for the purpose of Income-tax. Several adjustments as discussed below have to be made in the total income in order to arrive at the chargeable profits within the meaning of this Act (as per I Schedule) :—

(A) From the total income as computed under the Income-tax Act, the following items of income, profits and gains have to be excluded (Rule 1, I Schedule) :—

(i) Capital gains.

(ii) Compensation or other payment u/s 28 (ii) of the I. T. Act.

(iii) Profits and gains of any business of life insurance.

(iv) Balancing charge on assets u/s 41 (2) of the I. T. Act.

(v) Profits and gains of new industrial undertaking or hotel exempt u/s 84 of the I.T. Act (deleted w.e.f. 1-4-68)

(vi) Interest on tax-free Govt. securities.

(vii) Donations exempt u/s 88G equal to 50% thereof.

(viii) Dividends.

(ix) Royalties received from Government or a local authority or any Indian concern.

(x) Interest or fees for rendering technical services received by a non-resident company from Govt. or a local authority or any Indian concern.

(xi) Certain special reserves for banking companies.

(xii) Tax deduction in respect of export of goods.

(B) From the reduced total income net income-tax (excluding the income-tax on dividends distributed by the company during the previous year & tax payable u/s 104), on the total income (excluding capital gains, compensation moneys etc.) has to be deducted (Rule 2, I Schedule). Net tax paid in a foreign country on any part of total income has also to be deducted.

(C) The Income-tax Officer is empowered to increase the net amount of income thus found out by the addition of any expenditure on account of commission, entertainment and advertisement which is considered by him to be excessive. Interest paid on debentures or other borrowed moneys (forming capital base) has to be added back.

3. **Capital.**—The term "Capital" of a company under this Act, in the broad sense denotes the amount of its (i) paid up capital, (ii) development rebate reserve, (iii) other reserves (not allowed in the computation of profits), (iv) debentures & (v) any moneys borrowed from the I. F. C. I., I. C. I. C. I.

or a bank or any person in a country outside India for the creation of any capital asset in India, where the period of borrowing is not less than 7 years as at the begining of the year diminished by the value of assets the income from which has to be excluded under clauses (iii), (vi) or (viii) of Rule 1 of the I Schedule as described above as exceeds the cost of borrowings or reserves not considered as 'Capital'. Any increase or decrease in the paid up capital of the company is added to the "Capital" in proportion to the period of such increase or decrease. Taxation reserves or general reserves, dividend reserves, surplus etc., are not 'reserve'. The percentage of standard deduction and the rates of surtax etc., are to be computed with reference to "Capital" computed as per Schedule II as described above.

4. **Standard deduction** :—It is equal to 10% of the capital of the company or Rs. 2,00,000, whichever is greater. It is to be deducted from the chargeable profits for the purpose of finding out the tax payable under the Act. If there is any deficiency, it is ignored.

5. **Rate of Surtax (III Schedule).**

Surtax is charged on the net chargeable profits (Difference between chargeable profits and the standard deduction) at the rate of 35%. For the A.Y. 1969-70 & onwards, the rate will be 25%.

6. **Ceiling on total tax payable by companies.**

The Finance Act, 1965 has amended the Surtax Act, by inserting a third proviso to Paragraph I in the III Schedule to introduce a provision limiting the aggregate amount of income-tax and surtax on companies of certain categories (viz., Indian companies or companies declaring dividends in India, and in which the public are substantially interested and whose paid up share capital as on the last day of the previous year is not less than 25% of the amount computed under the II Schedule to the Surtax Act) to 70% of their total income. If the aggregate amount of such tax liability is found to be in excess of the

aforesaid limit the surtax otherwise payable by the company will be reduced by the excess amount. For this purpose, income-tax will include the amount of income-tax payable by the company with reference to the dividends declared or distributed by it in respect of its equity capital. This is illustrated in Problem No. 107 below.

PROBLEM No. 106.

The following are the particulars about a domestic coal mining company in which the public are substantially interested :—

Net profit	...	Rs. 12,00,000
Capital	...	Rs. 40,00,000

Calculate the surtax payable by it.

SOLUTION.

The income-tax and Sur-tax payable by it will be calculated as under :—

	Rs.
Net profits	12,00,000
Less : Deduction u/s 80 I @ 8% ...	96,000
Total Income	11,04,000
Less : Income-tax @ 55%	6,07,200
Chargeable profits	4,96,800
Less : Standard deduction @ 10% of Rs. 40,00,000	4,00,000
Net Chargeable profits for Sur-tax ...	96,800
Sur-tax @ 35%	33,880

PROBLEM No. 107.

The following are the particulars about a section 108 company for the A. Y. 1968-69 :—

		Rs.
Paid-up Capital	...	10,00,000
Total Income	...	60,00,000
Dividend distribution	...	21,00,000

Calculate the Sur-tax payable by it.

SOLUTION.

The Income-tax and Sur-tax will be calculated as under :—

		Rs.
Total Income	...	60,00,000
Less : I. T. @ 55%	...	33,00,000
Chargeable profits	...	27,00,000
Less : Standard deduction (minimum)	...	2,00,000
Net chargeable Profits to Sur-tax	...	25,00,000
Sur-tax @ 35%	...	8,75,000
Dividend tax @ $7\frac{1}{2}\%$ on excess distribution (i.e., 21,00,000—Rs. 1,00,000 being 10% of paid-up Capital) i.e., $7\frac{1}{2}\% \times 20,00,000$		1,50,000
The I.T., dividend-tax & sur-tax payable by the company comes to Rs. 33,00,000+ 1,50,000+8,75,000		43,25,000
However, the maximum tax in such cases is limited to 70% of income viz.,	...	42,00,000
∴ Excess amount over 70% is	...	1,25,000

This amount of Rs. 1,25,000 will be deducted from the Sur-tax of Rs. 8,75,000 and the net sur-tax payable by the company would be only Rs. 7,50,000.

APPENDIX III

Some leading cases on Income-tax (As prescribed for Inter. Law Examination of Calcutta University) :

1. In re : Patiala State Bank (1941) 9 I.T.R. 95, 112-3.

Facts :—The Patiala State Bank which was owned and controlled by the Ruler of the Patiala State was carrying on a banking business. The bank had its head office at Patiala and had several branches in the State. Out of the amount at its disposal, the Bank had invested a certain amount in British India in securities of the Government of India. The Bank had also acquired at Mussorie house property taken over from a debtor in part satisfaction of a loan advanced to him and had further derived profit by sale in British India of securities belonging to it. In respect of the years 1935-36 and 1936-37 the Bank was assessed to income-tax under the Government Trading Taxation Act, 1926, in respect of income which accrued or arose to it or was received by it in British India.

Principles laid down :—

(i) The Patiala State was a State under His Majesty's protection and therefore, came within the expression "His Majesty's Dominions" in the Government Trading Taxation Act. (ii) The said Act was applicable to the Patiala State Bank and rendered it liable to taxation under the Indian Income-tax Act, 1922. (iii) The income received from the investment by the Patiala State Bank in Government of India securities was profits from the business of the Bank received in British India, and as such taxable. (iv) The property which had been taken over in respect of a bad debt of the banking business was not property occupied in British India for the purposes of the business, but the income derived from such property was income arising in connection with such business and in that sense was liable to be taxed. (v) The question

whether the profit derived by the Bank by the sale of its investment was assessable to income-tax, was a question of fact on which the decision of the income-tax authorities was final. Hence the assessment of the Bank was legal and valid.

2. Tennant v. Smith 3 T.C. 158, 171 (H.L.) per Lord Macnaghten.

Facts :—A bank manager or agent was given free residence. The question was whether he should be assessed on the value of the privilege of free residence.

Principles laid down :—

It was held that the bank manager or agent was not assessable in respect of the privilege of free residence in particular because he was not free to dispose of that advantage or turn it into cash. Lord Macnaghten said, "Schedule E extends only to money payment or payments convertible into money."

N.B.—Section 17 (2) which defines "perquisite" as including *inter alia* the value of rent-free accommodation, is a departure from the principle laid down in the case.

3. Commissioner of Income-tax v. Shaw Wallace & Co. I.L.R. 59 Cal. 1943 (P.C.)

Facts :—The assessee company did business as merchants and agents of several companies. It acted as the distribution agent of two petroleum companies for a number of years without any formal agreement with either of them. The two petroleum companies combined and decided to terminate the agency of the assessee company. Each of the two companies paid large sums to the assessee company, the payment by one company being as "full compensation for the cessation of the agency" and by the other as compensation for loss of their office as agents to the company. The question was whether the compensation amounts were taxable.

Principles laid down :

The Privy Council held that as the sums were paid not for

carrying on any business but as compensation for compulsory cessation of business, the payments were not income receipts. Sir George Lowndes gave the following definition of "income" which has since become classic :—

"Income...in this Act connotes a periodical monetary return 'coming in' with some sort of regularity, or expected regularity, from definite source. The source is not necessarily one which is expected to be continuously productive, but it must be one whose object is the production of a definite return, excluding anything in the nature of a mere wind fall. This income has been likened pictorially to the fruit of a tree, or the crop of a field. It is essentially the produce of something which is often loosely spoken of as 'capital'. But capital, though possibly the source in the case of income from securities, is in the most cases hardly more than an element in the process of production.

4. The Premier Construction Co. Ltd. v. The Commissioner of Income-tax, Bombay City [1948] 16 I.T.R. 380.

Facts :—The assessee was the managing agent of a company. It was entitled to a commission at the rate of 10% p. a. on the annual net profits of the company. A part of the company's income was agricultural income as defined in the Income-tax Act. The assessee claimed that as its remuneration was calculated with reference to the income of the company, part of which was agricultural income, such part of the remuneration as was proportionate to the agricultural income of the company, was itself agricultural income and as such exempt from income-tax.

Principles laid down :—

The assessee received no agricultural income as defined by the Act, that it received remuneration under a contract for personal service calculated on the amount of profits earned by the employer, payable, not in specie out of any item of such profits, but out of any moneys of the employer available for the purpose. Therefore, the remuneration was not agricultural income and was not exempt from tax.

5. Capt. Maharaj Kumar Gopal Saran Narain Singh v. Commissioner of Income-tax, Bihar & Orissa [1935] 3 I.T.R. 237 (P. C.).

Facts :—The assessee who owned a nine annas share in an estate, with the object of discharging his debts and of obtaining for himself an adequate income for his life, conveyed the greater portion of his estate to his son-in-law's mother who owned the remaining seven annas in the estate. The consideration for the transfer was (i) the payment of the assessee's debts amounting to Rs. 10,26,937, (ii) a cash payment of Rs. 4,73,063 ; and (iii) an annual payment of Rs. 2,40,000 to the assessee for his life. The Patna High Court decided that the said sum was income liable to tax and that it was not agricultural income. The assessee appealed to the Privy Council.

Principles laid down :—

(i) The word 'income' is not limited by the words 'profits and gains' and anything which can properly be described as income is taxable under the Act unless expressly exempted.

(ii) The annual payment was not agricultural income as it was not rent or revenue derived from land but money payable under a contract imposing a personal liability of the covenantor the discharge of which was secured by a charge on land.

(ii) In this case the assessee had exchanged a capital asset for a life annuity which was income in his hands. He had not exchanged his estate for a capital sum payable in instalments.

6. Raja Bijoy Singh Dudhuria v. Commissioner of Income-tax, Calcutta [1933] 1 I. T. R. 135 (P. C.).

Facts :—The assessee succeeded to the family ancestral estate on the death of his father. Subsequently his step-mother brought a suit for maintenance against him in which a consent decree was made directing the assessee to make a monthly payment of a fixed sum to his step-mother and declaring that

the maintenance was a charge on the ancestral estate in the hands of the assessee. In computing his income the assessee claimed that the amounts paid by him to his step-mother under the decree should be excluded.

Principles laid down :—

(i) When the Act by S. 3 of the Indian Income-tax Act, 1922 subjects "all income" of an individual, it is what reaches the individual as income which it is intended to charge.

(ii) It was not a case of the application by the appellant of part of his income in a particular way ; it was rather the allocation of a sum out of his revenue before it became income in his hands.

(iii) The decree of the court by charging the appellant's whole resources with a specific payment to his step-mother had to that extent diverted his income from him and had directed it to his step-mother ; to that extent what he received for her was not his income.

APPENDIX IV

LATEST EXAMINATION QUESTION PAPERS ON INCOME-TAX FULLY SOLVED

Note :—Questions have been answered as per the Income-tax Act, 1961, (up-to-date), the Income-tax Rules, 1962 (up-to-date) and the Finance Act, 1968. Hence the dates in the question papers have accordingly been modified.

BURDWAN UNIVERSITY

B. Com. (Hons.) 1968

Income Tax & Costing

1. (a) Explain the provisions relating to exemption from income-tax the incomes of a foreign technician, assessable under the head "Salaries".

   (b) what is a "recognised provident fund" ? what benefits does this fund enjoy in the matter of income-tax assessment ?

Ans. (a) See Ch. IV, Para (7), Page 45.

(b) See Ch. V, Para 9.

2. (a) Mr. Banerjee has built a house during 1967-68. What factor should be taken into account in the assessment of rent income from this property for 4 years hence.

   (b) What incomes constitute the total income of a previous year of a person who is a resident ?

Ans. (a) In the assessment of rent income from property of Mr. Banerjee for 4 years the main factor which requires consideration is that the Annual Value for three years must be reduced as stated in s. 23 (1), which provides that in the case of residential units constructed after 1.4.1961 the Annual Value shall be reduced for a period

of three years from the date of the completion of the building by a sum of Rs.600 per residential unit but in no case there should be a loss from such property—other factors have to be seen just like any other assessee regarding repairs, municipal tax, collection charges etc. Full local taxes will be deductible w.e.f. A.Y.1969-70 onwards.

(b) See Ch. III, Para. 4

3. Distinguish between
   (i) "Previous year" and "Assessment year"
   (ii) A registered firm and an unregistered firm.
   (iii) Rebates and Reliefs.

Ans. (i) See Chapter I, Para 8
   (ii) See ,, XV, Paras 4 & 5
   (iii) See Chapter IV, Section II.

4. Write short notes on :—
   (a) Profits in lieu of salary. (b) Agricultural income.
   (c) Depreciation allowance.

Ans. (a) See Ch. V, Para 4.
   (b) See Ch. I, Para 11.
   (c) See Ch. VIII, Para 8.

5. Compute the total income and also show the allocation thereof to the three partners A, B and C having interest in the ratio of 50 : 25 : 25 respectively of the 'firm' Messrs. Gupta Cloth Stores from the following particulars during the year ended 31st, December, 1967 :—

(a) Net Profit before depreciation on building and furniture 56,000.

(b) Building A/c brought forward from the last year Rs. 2,10,000 and furniture A/c. Rs. 32,000. Depreciation allowable in income-tax assessment at 5 per cent. on building and 10 per cent on furniture.

(c) Profit and Loss A/c shows the undernoted expenses :—

(i) Partner's salary A. Rs. 10,000, B. Rs. 6,000 and C. Rs. 5,000.

(ii) Rent and Taxes A/c Rs. 4,500 includes rent paid for A's residence Rs. 2,400 ; Municipal taxes paid Rs. 1,500 for a house owned and used by B, and Income-tax payment of Rs. 600.

(iii) Legal charges A/c includes Rs. 800 paid to a lawyer for an income-tax appeal case.

(d) Opening stock and closing stock stand at Rs. 30,000 and Rs. 45,000 respectively. It is the practice to undervalue the stocks at 5 per cent.

(c) A penalty of Rs. 2000 for dealing in contraband goods has been debited in Sundry Expenses A/c.

Ans. Computation of total Income of M/s. Gupta Cloth Stores for the year ended 31.12.67.

Net Profit as per Profit & Loss a/c.		56,000
Add : (1) Salary paid to Partners.		
A.	10,000	
B.	6,000	
C.	5,000	21,000
(2) Municipal Tax For B's house		1,500
(3) Rent & Rates (Rent paid for the residence of Partner A)		2,400
(4) Income-tax		600
(5) Legal charges (for conducting I.T. Appeal is not allowable)		800
(6) Penalty for Dealing in Contraband goods (It is not necessary for carrying on the business of the concern and it is for illegal purpose hence added back)		2,000
(7) Firms stocks being under valued $\frac{(15000 \times 100)}{95} - 15,000 = 789$		789
		85,089

Less : Depreciation			
(1) On Furniture 32,000 @ 10%		3,200	
(2) On Buildings 2,10,000 @ 5%		10,500	13,700
			71,389
		or u/s 288A	71,390

Allocation of firm's total income amongst partners.

Partners Salary	Balance of Business Income		Total
A 50% 10,000	25,195		35,195
B 25% 6,000	12,598		18,598
C 25% 5,000	12,597		17,597
21,000	50,390	Total	71,390

BURDWAN UNIVERSITY

B. Com. 1968 (Pass Course)

Group B.

1. Explain any two of the following :—
(a) Previous year ; (b) Dividend; (c) Agricultural income ; (d) Residenship of an Individual.

Ans. (a) See Chapter I, Para 8.
(b) See Chapter X, Para 4.
(c) See Chapter I, Para 11.
(d) See Chapter III, Para 2.

2. What deductions are allowable in computing the income from (1) Salaries and (2) House property.

Ans. (1) See Chapter V, Para 5.
(2) See Chapter VII, Para 3.

3. The following are the particulars of the income of a University Professor :—
(a) Salary Rs. 1,200 per month from which 8% is deducted for Provident fund to which the University contributes 12%.

(b) Rent free bungalow of the annual letting value of Rs. 960/-

(c) Wardenship allowance of Rs. 1,200 per annum.

(d) 4% tax-free interest on Government Loan of Rs. 5,000/-

(e) Income from house property Rs. 1,800/-

(f) Interest on Postal Savings Bank Deposit Rs. 300.

(g) Royalty from books Rs. 2,500/-

(h) Examinership remuneration Rs. 3,500/-

(i) Amount received on Prize Bonds Rs. 500. During the year, he paid Rs. 2,400/- as Life Insurance premium on his own policies and spent Rs. 600/- on books purchased for his own use. Find out his total income and exempted income for the A.Y. 1968-69.

Ans. Computation of total income of a University Professor for the A.Y. 1968-69.

1.	**Salaries :**		Rs.
	(a) Basic salary @ Rs. 1,200 p.m.		14,400
	(b) Perquisite in the form of rent-free bungalow		960
	(c) Wardenship allowance		1,200
			16,560
	Less : Deduction u/s 16 :		
	Amount spent on purchase of Books Rs. 600/-		
	—But the maximum amount deductible is Rs. 500/- as per s. 16(i)		500
	Net income under the head 'Salary'		16,060
2.	Interest on Securities 4% on Rs. 5,000		200
3.	Income from house property (Net)		1,800
4.	Income from other sources :	Rs.	
	(a) Royalty from Books	2,500	
	(b) Examinership Remuneration	3,500	6,000
	Gross Taxable Income		24,060

Deduction under Chapter VIA :

(a)	Contribution to R.P.F. @ 8% of 14,400	1,152	
(b)	L.I.P.	2,400	
		3,552	
	Deduction on Rs. 3552 @ 60%		2,130
	Total Income (Subject to A.D.)		21,930

FULLY EXEMPTED INCOME :

(a)	Interest on Postal Savings Bank Deposit	300
(b)	Prize Bonds (Being Casual Income)	500
		800

BURDWAN UNIVERSITY

TAXATION M. Com., (1968)

1. Write short notes on any three of the following as defined in the Income-tax Act, 1961 :

a) Agricultural Income [Section 2(1)]
b) Capital Asset [Section 2(14)]
c) Dividend [Section 2 (22)]
d) Previous year [Section 3]
e) Profits in lieu of Salary [Section 17(3)]

Ans. a) See Chapter I, Para 11.
b) See Chapter IX, Para 3.
c) See Chapter X, Para 4 to 6.
d) See Chapter I, Para 8.
e) See Chapter V, Para 4.

2. Section 12(1) of the Income-tax Act, 1961 reads as follows :—

"Any income of a charitable or religious institution derived from voluntary contributions and applicable solely to charitable or religious purposes shall not be included in the total income of the institution."

Explain with suitable examples.

OR

Section 17(2) of the income tax Act, 1961 reads as follows :-
"Prequisite includes :—

i) ... ...

ii) ... ...

iii) ... ...

iv) Any sum paid by the employer in respect of any obligation which but for such payment, would have been payable by the assessee."

Explain with suitable examples.

Ans. See Chapter IV, para 3, page-42.

OR

Any sum paid by the employer in respect of any obligation which but for such payment, would have been payable by the employee is added as a taxable perquisite in the salary of the employee irrespeetive of the fact whether he is a director or a senior employee or a junior employee or whether his salary exceeds Rs. 18,000 or not. Thus where an employee's debt is discharged by a company by making a payment to the creditor of the employer it would come under this clause. Similarly, where the employee is is a member of some social club, like the Lions Club or the Rotary Club etc. and his subscription is paid by the company, the same would be added as a taxable perquisite to the salary of the employee. The essential condition for the taxability of the perquisite under this clause is that the obligation of the employee should be paid by the company in cash.

3. Shri Ahi Bhusan Chatterjee a resident Indian citizen employed as an engineer in Durgapur gives the following particulars of his income for the year ended 31st March, 1968.

a) Net Sal ary—Rs. 14,000, after deduction of income-tax of Rs. 6,000, Contribution to a Recognised Prov. Fund of Rs. 4,500, Motor car advance made by the

employer of Rs. 3,000 and Life Insurance Premia deducted (for a policy of Rs. 40,000) under salary Savings Scheme Rs. 2,500.

b) Employer's contribution to the Recognised Prov. Fund amounting to Rs. 4,500.

c) Interest credited to the Prov. fund Account of Shri Chatterjee @ 6% amounting to Rs. 12,000.

d) During the year Shri Chatterjee occupied a fully furnished house at Durgapur owned by his employer, the fair rent of which was Rs. 750 per month including hire charges of the furniture.

e) Shri Chatterjee was provided with a cook whose salary amounting to Rs. 100 per month was born by his employer.

f) Shri Chatterjee was also provided with a motor car of 20 H.P. for his official as well as private use. The running and maintenance costs were borne by his employer.

Compute Shri Chatterjee's total income for the assessment year 1968-69 ignoring annuity deposits if any.

Ans. Computation of total income of Shri Ahi Bhusan Chatterjee for the previous year ended 31-3-68.

	Rs.	Rs.
Basic Salary :		
Net Salary	14,000	
Add : Tax deducted	6,000	
Contribution to R.P.F.	4,500	
Motor Car advance	3,000	
L.I.P.	2,500	30,000
Excess contribution to R.P.F. by an employer ...	4,500-3,000	1,500
Interest credited to R.P.F. a/c	12,000	
Less : Maximum exempted amount is 1/3 of salary	10,000	2,000

	Rs.	Rs.
Perquisite in the form of rent-free furnished house		
first 12½% of Salary	3,750	
Next excess of the F.R.V. over 25% of Salary		
F.R.V.=(750×12)=Rs. 9,000		
25% of Salary=7,500	1,500	5,250
Perquisite in the form of cook @ Rs. 100 p.m. ...		1,200
Perquisite in the form of Motor Car (250×12)		3,000
		44,575
Deduction u/s 80C.		
(i) Contribution to R.P.F.	4,500	
(ii) L.I.P.	2,500	
	7,000	
Deduction @ 60% on the first Rs. 5,000	=3,000	
@ 50% on Rs. 2000	=1,000	4,000
(Subject to A.D.) Total Income		40,575

JIWAJI UNIVERSITY, GWALIOR

B. Com. (Part III) T.D.C.

Examination, 1968

Income-Tax & Costing

1. State the provisions of Income-tax Act in respect of exemptions from tax of newly established industrial undertakings in India.

Ans. See Chapter XII, Para (vii).

2. Explain the difference in the assessment of the profit of a registered firm and an unregistered firm.

Ans. See Chapter XV, Paras 4 & 5.

3. Question & Ans.—See Q. & Ans. No. 2 of Burdwan University B. Com. (Pass) 68.

4. A, B and C are partners in a firm sharing profits and losses equally. The net profit of the firm after deducting the following expenses was Rs. 65,000 for the year ending 31.12.67 :—

(1) Salary to B. at Rs. 400 p. m.

(2) Rent to A, in whose building the business was being carried on at Rs. 200 p.m.

(3) Interest on A's Capital Rs. 2,750
„ „ B'S „ Rs. 1,490
„ „ C's „ Rs. 650

(4) Interst on Loan taken from A Rs. 700

(5) Commission to C, Rs. 4,300.

Compute the total income of the firm and the share of each of the partners therein.

Ans. Computation of total income of Firm.

	Net Profit as per P&L a/c	65,000
Add : (a)	Salary to Partner B.	4, 800
(b)	Interest to Partners on Capital.	
	A-2,750	
	B-1,490	
	C- 650	4,890
(c)	Commission to partner C.	4,300
(d)	Interest on Loan taken from Partner A	700
	Total Income	79,690

Allocation of firm's total income amongst partners u/s 67 :

Partner	Salary	Interest	Commi-ssion	Balance of Total Income	Total Income.
A	—	3,450	—	21,666	25,116
B	4,800	1,490	—	21,667	27,957
C	—	650	4,300	21,667	26,617
Total	4,800	4,890	4,300	65,000	79,690

5. Question & Ans. See Problem and solution No. 29, Chapter VI at Page 105.

UNIVERSITY OF INDORE

B. Com. (Part III)

1. 'Assessments are made on the income of the previous year'. Explain. Are there any exceptions to this general Rule ?

Ans. See Ch. I, Para 8.

2. What deductions are allowed to a businessman in computing Profits ? Also specify the expenses disallowed.

Ans. See Ch. VIII, Paras 3 & 4.

3. See Q. No. 3 set in Burdwan University B. Com 1968 (Pass Course) and its answer.

4. A. B. and C. are partners in a firm sharing profits and losses in the ratio of 2:2:1. The firm's Profit and Loss Account for the year ended 31st March 1968, showed a net loss of Rs. 25,000 after charging the following items :—

	A Rs.	B Rs.	C Rs.
Interest on Capital	3,000	3,000	1,500
Salary	—	—	2,000
Commission	2,500	—	—

A's taxable income from other sources was Rs. 6,500 while B and C had no other source of income. Show how the assessment of partners would be made when :—

(1) The firm is a registered, and when

(2) The firm is unregistered.

Ans. Computation of total income :

Net loss as per Profit & Loss a/c.		25,000
Deduct :— (as there is loss) :—		
(a) Interest Paid to Partners	Rs. 7,500	
(b) Salary paid to Partner C.	Rs. 2,000	
(c) Commission paid to Partner A.	Rs. 2,500	12,000
Net Loss		13,000

Allocation of Profit or loss amongst the partners if the firm is Registered :

Partners	share	Interest	Salary	Commi-ssion	Balance of Profit & or Loss	Other Income
A	2 :	3,000	-	2,500	(-) 10,000	6,500
B	2 :	3,000	-	-	(-) 10,000	-
C	1 :	1,500	2,000	-	(-) 5,000	-

If the firm is unregistered, Partners' income will be :

A : Rs. 6,500
B : Nil
C : "

The share of loss from the Regd. firm will not be set off under any other head.

5. See Q. No. 5 of Jiwaji University Question Paper.

UNIVERSITY OF JABALPUR

B. Com. Final, 1968.

6. What do you understand by previous year ? 'The General rule is that an Assessee pays income-tax in the financial year on the income of the previous year'. Are there any exceptions to this general rule ?

or

The Indian Income-tax Act confers absolute exemptions in respect of certain incomes. Discuss them fully.

Ans. See Chapter I, Para 8 or See Chapter IV.

7. Mr. Hiralal is employed in a Factory as a Manager on a monthly salary of Rs. 900 plus a dearness allowance of Rs. 120 p. m. During the year he received a bonus Rs. 1,350. The company also paid him car allowance of Rs. 75 p. m. He contributes 12½% of his salary to a Recognised providend Fund to which his employer contributes an equal amount. Interest on providend fund is calculated at 7½% per annum which amounts to Rs. 600 for the year. He recei ved Rs. 8,000 from his previous employer on account of Unrecognised

Provident Fund, of which half the amount consisted of employer's contribution and interest thereon. He also gets a house rent allowance of Rs. 70/- per month. He has actually paid Rs. 125/- per month as rent of the house occupied by him for his residence. He paid Rs. 4,250 as Life Insurance premium on a policy for Rs. 35,000.

Ascertain his table income for the assessment year 1968-69.

Ans. Computation of total income of Mr. Hiralal for the Previous year ended 31.3.68 i.e., A.Y. 1968-69.

Basic salary @ Rs. 900 p.m.		10,800
Dearness allowance @ Rs. 120 p.m.		1,440
Bonus		1,350
Car allowance @ Rs. 75/- p.m.		900
Excess Interest on R.P.F. @ $1\frac{1}{2}\%(7\frac{1}{2}-6\%)$		270
,, Contribution by employer ($12\frac{1}{2}\%$-10%) to R P.F.		120
Receipt from Unrecognised P.F. from the previous employer (only his own share will be taxable) $\frac{1}{2} \times 8,000$		4,000
House rent allowance: Maximum amount exempted :—		
u/s 10(13A) is the minimum of the following :		
(a) 10% of the salary	1,080	
(b) Actual amount of H.R.A.	840	
(c) Rs. 300 p.m.	3,600	
(d) Excess of House Rent over 10% of Salary i.e. 1500-1080=	420	
Maximum exempted H.R.A.=Rs. 420. (840−420)		
Taxable H.R.A.		420
		19,300

Deduction u/s 80C :

(i) Contribution to RPF by employee @ $12\frac{1}{2}\%$=Rs. 1,350		
(2) L.I.P. Rs. 4,250 but it is limited 10% of sum assured	=Rs. 3,500	
	Rs. 4,850	
Qualifying Amount Deduction @ 60%		2,910
Taxable Income		16,390

DELHI UNIVERSITY

B. Com., 1968.

Income-Tax & Costing.

6. 'The scope of the total income of a person is determined by reference to his residential status in India'.

Give the relevant provisions of the income-tax Act in support of the above statement.

Ans. See Chapter III.

7. What relief of income-tax is allowed to an assessee in respect of life insurance premium and provident fund contributions and interest thereon ? How is the amount of such relief calculated ?

Ans. See Chapter V, paras 7 to 11.

8. State briefly the law relating to any two of the following :

(a) Set-off of losses.

(b) Refunds.

(c) Deduction of tax at source.

Ans. (a) See Chapter XI, Para 9.

(b) See Chapter XII.

(c) See Chapter XXI, Paras 2 & 3.

9. Ram, Mohan and Hari are three partners in a firm sharing profits and losses in the ratio of 4:3:1. The profit and loss Account of the firm for the year 1967 showed a net loss of Rs. 20,000 after charging the following items :

Interest on Capital :

Ram Rs. 4,000 ; Mohan Rs. 3,000 ; and Hari Rs. 2,000.

Salary :

Ram Rs. 1,000 ; Mohan Rs. 800 ; and Hari Rs. 2,000.

Taxable income of Ram from other sources was Rs. 8,000 while Mohan and Hari had no other income.

Explain how assessment would be made (a) when the firm is registered, and (b) when it is unregistered.

Ans. Computation of Total Income of firm.

Net Loss as per P & L A/c.			20,000
Less : (a) Interest on Capital Ram	4,000		
Mohan	3,000		
Hari	2,000	9,000	
(b) Salary to Partners :			
Ram	1,000		
Mohan	800		
Hari	2,000	3,800	12,800
Total Income			(—) 7,200

If the firm is Registered

Allocation amongst partners u/s 67 :

Partner	Share	Int.on Cap.	Salary	Balance of Profit or Loss	Other Income	Total Income
Ram	4	+4,000	+1,000	(—) 10,000	8,000	(+) 3,000
Mohan	3	3,000	800	(—) 7,500		(—) 3,700
Hari	1	2,000	2,000	(—) 2,500		(+) 1,500
Total		+9,000	+3,800	(—) 20,000	8,000	(+) 800

If the firm is unregistered partner's income will be :

Partners Name	Income	
Ram	+Rs. 8,000	The share of loss from the unregistered firm will not be set off under other head in the case of Ram) (for rate purpose only)
Mohan	(—)	
Hari	+Rs. 1,500	

OSMANIA UNIVERSITY

B. Com. II Year (New) Examination, 1968

Advanced Accountancy (only I.T. portion solved)

8. The following particulars are furnished by a Company Official in respect of the year ending 31st March, 1968 and you are requested to compile his Income for Income-tax purposes.

Salary Rs. 900 per month.

Contribution to recognised Provident Fund 8% of salary, the employer contributing a like amount.

Rent free quarters, unfurnished, whose fair annual rental value is Rs. 1,500.

He is allowed entertainment allowance of Rs. 300 per month which he is getting regularly and continuously from the company from 1st April, 1953.

He pays Rs. 25 per half year as professional tax and has purchased books for Rs. 600 which he claims is necessary for the efficient performance of his duties.

Ans. *Computation of total income for the A.Y. 1968-69.*

		Rs.
Basic Salary @ 900 p.m.		10,800
Entertainment Allowance :		
Actual Amount received	Rs. 3,600	
Less : Maximum amount exempted $=\frac{1}{5}$ of salary	Rs. 2,160	1,440
Perquisite in the form of rent free unfurnished accomodation :		
10% of Salary=(Salary=10,800+1,440)=12,240		1,224
		13,464
Less : Deduction u/s 16 :-		
(1) Professional Tax	Rs. 50	
(2) Exp. on books (Maximum sum allowable as deduction is Rs. 500)	500	550
		12,914

Less : Deduction u/s 80C :		
Contribution to R.P.F. @ 8% of Rs. 10,800	Rs. 864	
Deduction @ 60%	Rs. 518	1,382
Total Income :		11,532

9. Briefly state the various deductions admissible while computing Income from "Property."

OR

An assessee owns a house property which he purchased in 1948. There are two indentical portions one of which is let out on a monthly rental of Rs. 200 while the other is occupied by the assessee himself for his residence. The annual municipal tax for the building amounts to Rs. 1,000. The house is mortgaged and the interest on mortgage amounts to Rs. 800 per annum. Ground rent at Rs. 40 per annum is paid on the property.

His other income is from business amounting to Rs. 20,000 in respect of the year ending 31-3-1968.

He pays life insurance premium of Rs. 900 on a policy of Rs. 10,000 on his own life.

Compute his income for Income-tax purposes.

Ans. See Chapter VII, para. 3.

Or,

Computation of total income for the A.Y. 1968-69.

1. **Income from House Property :**

A. Let out Portion :			Rs.
Rental Value			2,400
Less : Municipal Tax (full)			500
	Annual Value		1,900
Less : Deduction u/s 24 :			
$\frac{1}{6}$th for repairs	Rs. 317		
Interest on mortgage $\frac{1}{2}$ for this portion	400		
Ground Rent (")	20		737
Income from let out portion			1,163

B. **Own Occupied Portion :**

Rental value		2,400
Less : Municipal Tax (full)		500
Annual value		1,900
Less : $\frac{1}{2}$ Statutory Allowance		950
Annual Value		950
Less : 1) $\frac{1}{6}$th for Repairs	158	
2) Interest on Mortgage	400	
3) Ground Rent	20	578
Total Income		372

To sum up : *Total Income for A.Y. 1968-69*

1.	Income from House Property :		
	a) Let out Portion	Rs. 1,163	
	b) S.O. Portion	Rs. 372	1,535
2.	Income from business		20,000
	Total Income		21,535
	Deduction u/s 80C :		
	L.I.P. Rs. 900 @ 60%		540
			20,995
	Or u/s 288A		21,000

UNIVERSITY OF SAUGAR

B. Com. (Part III) 1968

Advanced Accountancy & Auditing.

(Only I.T. Portion Solved)

3. The following are the details of income of a University Professor during the year 1967-68 :—

(a) Salary, Rs. 1,200 per month ; Wardenship allowance Rs. 1,200 per year.

(b) Rent-free bungalow, whose annual letting value is Rs. 840.

(c) 4% interest on Government Bond of Rs. 5,000.

(d) Income from house property let at Rs. 150 per month.

(e) Interest on postal savings bank deposits, Rs. 308.

(f) Examinership remuneration Rs. 1,600.

(g) Royalty on his articles and books Rs. 1,600.

During the year, he paid Rs. 2,200 as life insurance premium. He also purchased books worth Rs. 850.

Ans. Computation of total income for the A.Y. 1968-69.

			Rs.
1.	Basic salary @ Rs. 1,200 p.m.		14,400
	Perquisite in the form of Rent-free accommodation		840
	Wardenship allowance		1,200
			16,440
	Less : Deduction u/s 16 for books (maximum allowed u/s 16 (1)		500
			15,940
	Gross Income under the head "Salaries"		
2.	Interest on Securities 4% on Rs. 5,000		200
3.	Income from house property @Rs.150 p.m.	1,800	
	Less : 1/6th for repairs	300	1,500
4.	Income from other sources :		
	(a) Examinership Remuneration	1,600	
	(b) Royalty on his article & Books	4,400	6,000
	(c) P.O.S.B. Int. of Rs. 308 is fully exempt		
	Gross Total Income		23,640
	Less : Deduction for L.I.P. Rs. 2,200 @ 60%=		1,320
	Total Income		22,320

(Subject to A.D.)

4. What is meant by 'Annual value' of house property ? What deductions are allowed from the annual value for computing the taxable income from property ?

Ans. See Chapter VI, Paras 2 & 3.

5. Explain the provisions of Income-tax in regard to the following :—

(a) Resident
(b) Income of religious trusts.
(c) Development Rebate.
(d) Deduction of tax at source.
(e) Registered firm.
(f) Best judgment assessment.

Ans. (a) See Ch. III, Para 2.
(b) See Ch. IV, Para IA (1)
(c) See Ch. VIII, Para 7.
(d) See Ch. XXI, Para 3.
(e) See Ch. XV, Para 4.
(f) See Ch. XIX, Para 6.

UNIVERSITY OF UJJAIN

B. COM. (Part III) 1968.

Income-tax & Costing.

1. What benefits received by an employee from his employer, are included under the head 'Salaries' ? Point out the deductions allowed in computing the taxable income from salary.

Ans. See Ch. V Paras 3 & 5.

2. What is meant by annual value of property and what deductions are allowed to arrive at the taxable income from property ? How would you arrive at the annual value of a house occupied by an assessee for his own residence ?

Ans. See Ch. VII, paras 2 & 3.

3. Write short notes on :—

(a) previous year, (b) Not—ordinary Resident, (c) Tax-free Securities.

Ans. (a) See Ch. I para 8.

(b) See Ch. III, para. 2 (i) (A).

(c) See Ch. VI, para. 1 (e).

4. Mr. K. is employed in a factory since 1st April, 1956. He has furnished the following details with regard to his income for the year ended 31st March, 1968 :

(a) Salary at Rs. 3,000 per month ; Bonus at six months' salary ; Conveyance allowance at Rs. 300 per month ; Entertainment allowance at Rs. 250 per month ; Commission equal to four months' salary.

(b) He is provided with free furnished quarters whose rental value is Rs. 400 per month. He is also provided with free lunch at the factory valued at Rs. 3 per day for 300 working days.

(c) His contribution to the factory's Recognised Provident Fund is at Rs. 450 per month and the employer contributes an equal sum. The interest credited to his provident fund account for the year is Rs. 3,000 at 5%.

(d) He claims relief for the following expenses :—

Car maintenance expenses and depreciation on car at Rs. 500 per month.

Cost of books and periodicals necessary for his business Rs. 1,200 in the year.

Compute K's total income for the A. Y. 1968-69.

Ans. Computation of total income of Mr. K. for the A. Y. 1968-69.

Basic salary @ Rs. 3,000 p. m.		36,000
Bonus @ 6 months' salary		18,000
Commission equal to 4 months' salary		12,000
Excess Conveyance allowance :		
Actual received Rs.	3,600	

Less : Expenses allowed—		
Total Exp. during the year =Rs. 6,000 (It is assumed that the car is being used for office and personal use equally)	3,000	600
Entertainment allowance		3,000
Perquisite in the form of rent-free quarters (It is assumed that the quarter is provided in Ujjain) First 12½% of the salary for this purpose :		
Basic salary	36,000	
Bonus	18,000	
Commission	12,000	
Taxable conveyance allowance	600	
Ent. allowance	$\frac{3,000}{69,600} \times 12\frac{1}{2}\% = 8,700$ but limited to the actual rental value @ Rs. 400 p.m.	4,800
Value of Perquisite in the form of free lunch		900
Excess contribution by the employer to R.P.F.		
Total amount contributed=Rs. 5,400		
Less : 10% of salary Rs. 3,600	1,800	1,800
	Total	77,100
Less : Deduction u/s 16(1) :		
Cost of books & Periodicals for his business Rs. 1,200 but maximum exempted is Rs. 500/-		500
		76,600
Deduction u/s 80C :		
Contribution to R. P. F. @ Rs. 5,400		
Deduction @ 60% on first Rs. 5,000=Rs. 3,000		
@ 50% on the total balance Rs. 400=Rs.	200	3,200
Total income		73,400

5. From the following Profit and Loss Account of a merchant for the year ended 31st March, 1968, ascertain his taxable profits from business and also his total income for the A.Y. 1968-69.

Profit & Loss Account

	Rs.		Rs.
To Office salary	4,800	By Gross Profit	35,532
" General expenses	2,550	" Commission	1,205
" Bad Debts written off	2,100	" Sundry Receipts	202
" Reserve for Bad Debts	3,000	" Rent of Buildings	2,640
		" Profit on sale of Investments	3,000
" Fire Insurance Premium	450	" Interest on Investments	751
" Advertising	2,500		
" Interest on Capital	1,000		
" Interest on Bank Loan	1,550		
" Loss of building by Fire	3,875		
" Depreciation	1,200		
" Net Profit	20,305		
	43,330		43,330

The amount of depreciation allowable is Rs. 1,000.

Ans. Ascertainment of total income for the A.Y. 1968-69

	Rs.	Rs.
Net Profit as per Profit & Loss a/c		20,305
Add :		
(a) Reserve for Bad debts	3,000	
(b) Interest on capital	1,000	
(c) Depreciation (to be considered separately)	1,200	5,200
		25,505

Note : It is assumed that loss of building by fire Rs. 3,875 is properly allowed u/s 32 (1) (iii)			
Less : (1) Rent of buldings to be assessed u/s 22.			2,640
(2) Interest on Investments (to be considered separately).			751
(3) Profit on sale of Investments (Capital Gains—Assumed Long-term exempt upto Rs. 5,000)		3,000	6,391
			19,114
Less : Depreciation as per I.T. Rules			1,000
Total income under the heading profits and gains of business			18,114

Total income for the A.Y. 68-69.

(a) Income from House property			
Rental value (Annual value)=Rs.	2,640		
Less : 1/6th for repairs	440		
	2,200		2,200
(b) Profits & Gains of Business or Profession			18,114
(c) Income from other Sources (Interest on Investments)			751
Taxable Income			21,065
(subject to A.D.) or u/s 288A			
			21,070

LUCKNOW UNIVERSITY

B. Com. (Final) Examination, 1968.

Advanced Accountancy & Auditing.

(Cost Accounts & Income-tax)

6. From the following particulars, find out the total income (after making all permissible deductions) of Dr. Raj of Rajasthan University for the year ending 31st March, 1968 :—

(a) Salary Rs. 500 p.m. Contribution to Provident Fund—His own 8% ; University's 12%

He purchased books of the value Rs. 1,000 during the year.

(b) His investments were :—

(i) Rs. 5,000 in 6% Preference shares of Mohan Ltd. The company declared a tax free dividend.

(ii) Rs. 6,000 in 5% Fixed Deposit in Allahabad Bank Ltd. for six months.

(iii) Rs. 10,000 in 4% National Plan Certificate (tax free).

(iv) Rs. 20,000 in $4\frac{1}{2}$% Treasury Certificate.

(v) Rs. 8,000 in 6% Mortgage Debentures of Bird & Co. He paid Rs. 200 interest on loan taken to purchase debentures and Rs. 25 as collection charges.

(c) He owns a house in which he lives himself and paid local taxes Rs. 200 ; Ground Rent Rs. 20 and insurance premium Rs. 25. The municipal valuation of the house is Rs. 2,000.

(d) He deposited Rs. 240 in Post Office 10 year Cumulative Deposit and Rs. 75 were credited in his Post Office Savings Bank Account.

(e) His share of profit from a registered firm, unregistered firm and Hindu Undivided family business is Rs. 2,000, Rs. 1,000 and Rs. 10,000 respectively.

(f) He received Rs. 1,000 examinership.

(g) He paid insurance premium on his life Rs. 400 and his children Rs. 3,00.

Ans. Computation of total income of Mr. Raj of Rajasthan University for the A.Y. 1968-69.

1. Salary Income		
Basic Salary @ Rs. 500 p.m.	6,000	
Less : Deduction u/s 16 for books (Maximum deductible sum is Rs. 500)	500	5,500
2. Interest on Securities :		
(a) 6% Mortgage Debentures of Bird Co.	480	

Less : Expenses :— Interest	200		
Collection Charges	25		
	225		255
(b) Interest on National Plan Certificates (Exempt)			
(c) 4½% Treasury Certificates (Exempt)			
3. Profits & Gains of Business :—			
(a) Share of Profit in Regd. Firm	2,000		
(b) Share of Profits in Unregistered Firm (For rate purpose only)	1,000		3,000
(c) Hindu undivided family business (Exempt) Rs. 10,000	—		
4. Income from other sources :			
(1) Examinership Fees	1,000		
(2) Interest on Fixed Deposits	150		
(3) Div. on Preference Shares Rs. 300 (Exempt as below Rs. 500)	—		1,150
(4) Interest on Post Office Savings Bank a/c - Exempt	—		
5. Income from house property :			
Municipal Valuation	2,000		
Less : Municipal Taxes (It is assumed that the house is constructed before 1.4.50)	200		
	1,800		
Less : 1/2 Statutory Allowance	900		
Annual Value :	900		
Less : 1/6th repairs 150			
Ground Rent 20			
Insurance Premium 25	195		705
Gross Total Income			10,610
Deduction u/s 80C :			
(1) Contribution to P.F.	480		

(2) L.I.P. (No deduction is allowable on the premium paid on children's life)	400	
(3) P.O. Cumulative Deposit	240	
Total qualifying amount for rebate	1,120	
Deduction @ 60% on Rs. 1,120		672
Total Taxable Income		9,938
or u/s 288A		9,940

7. In what respects is the treatment of registered firm different from that of unregistered firm under the Indian Income-tax Act ?

Ans. See Chapter XV, Paras 2 & 5.

8. In computing taxable income from house property, what deductions are allowed from annual value ? How would you calculate the annual value of a house occupied by the owner himself ?

Ans. See Chapter VII, Paras 3 & 2(d).

9. State, with reasons, admissibility or otherwise of the following items of expenditure in computing taxable profits of a business :—

(a) Legal expenses include Rs. 1,000 as Advocate's fee in Income-tax Appeal.

(b) Rs. 1,200 incurred in connection with assessee's prosecution for smuggling goods to Pakistan.

(c) Payment of Rs. 50,000 to Patna University for establishing a library for scientific research relating to assessee's own business.

(d) Rs. 20,000 incurred in constructing a hospital for the employees.

(e) Rs. 500 incurred on the Garden Party to the Education Minister by a school book publisher.

Ans. (a) This expenditure is not admissible as the expenses incurred are for personal liability.

(b) Where an assessee commits an offence, the expense it incures in an infructuous attempt to vindicate itself cannot be said to have been laid out or expended for the purpose of earning income from business and hence these are not admissible in computing the total income.

(c) It is allowable as deduction as per s. 35(1) (iii) which states that any sum paid to a university, college or other institution to be used for researchfor assessee's business is allowable.

(d) This will not be allowable as the expenditure incurred is of a capital nature and any expenditure of capital nature is non-deductible.

(e) It will now be deductible as it is incidental to business.

10. Explain any two of the following terms :—

(a) Agricultural income.
(b) Development Rebate.
(c) Non-Resident.
(d) Perquisite.

Ans. (a) See Chapter I, Para 11.
(b) See Chapter VIII, Para 7.
(c) See Chapter III, Para (C).
(d) See Chapter V, Para 3.

CALCUTTA UNIVERSITY

B. Com. (Hons.) 1968

(Revised Regulation)

Income-Tax and Costing (Honours).

1. (a) What are the primary conditions which must be satisfied before a particular item of income may be treated as agricultural income ?

(b) Name the various heads of income under the Income-tax Act and state giving reasons the name of the particular head of income under which the items of income described below are to be included :

(i) dividends received by a dealer in stocks and securities on share held by him as stock-in-trade of his share-dealing business.

(ii) rent realised from employees for accommodation provided to them by the employer where such accommodation is owned by the employer and the occupation thereof by the employees facilitates the carrying on of the business of the employer in which the said employees are working ;

(iii) fees received by a director of a company for attending the meetings of the said company ;

(iv) remuneration received by a practising Chartered Accountant from the University for service there as a part-time lecturer ;

(v) remuneration received by a practising lawyer from the University for examining answer scripts of candidates sitting at the Law examinations of the University.

Ans. (a) See Chapter I, Para 11.

(b) See Chapter I, Para 5.

(i) Income from other sources.

(ii) Profits and gains of business and profession—as building apprutenant thereto rented to its employees facilitates the carrying on of the business of the employer as per the decision of *Jamshedpur Engineering & Machine Manufacturing Co. Ltd.* v. *C.I.T.*

(iii) Income from other sources.

(iv) Salaries.

(v) Income from other sources.

2. B, a British National came to India for the first time on June, 1961 taking up employment under an Indian company with whom he was still serving on 31st March, 1968. During this period of service he had been away from India on leave every year for the months of January and February.

He gives the following particulars of his income for the year ended 31st March, 1968.

(i) Basic salary, dearness allowance, marriage allowance

and overseas allowance @ Rs. 2,000, Rs. 500, Rs. 200 and Rs. 300 per month respectively.

(ii) Own contribution to a recognised provident fund @ Rs. 250 per month matched by an equal contribution by the employer.

(iii) A furnished house in Calcutta for which the company pays to the owner of the house rent @ Rs. 1,500 per month and recovers from B @ Rs. 500 per month.

(iv) Passage money of Rs. 8,000 for self and wife for going on leave to the U.K. and returning there from.

(v) A 12 horse-power car for personal as well as official use provided by the company, the running and maintenance costs being also met by it.

(v) Dividend of Rs. 10,000 received in the U.K. from Sterling companies.

During the period that he stayed away from India on leave, gave up his rights to occupy the house provided to him and to use the car. B took out in India a life insurance policy for the sum of Rs. 1,00,000 on which he paid a premium of Rs. 6,000 during the year.

Compute B's total income for the assessment year 1968-69 assuming that he had no other income during the year. Indicate your reasons, wherever necessary, for the exclusion or inclusion of any particular item of income or expenditure. Ignore annuity deposit.

Ans. Computation of total income of Mr. B. for the A. Y. 1968-69. Salaries:

Basic Salary @ Rs. 2.000 p.m.	24,000
Dearness Allowance @ Rs. 500 p.m.	6,000
Marriage Allowance @ Rs. 200 p.m.	2,400
Overseas Allowance @ Rs. 300 p.m.	3,600
Excess contribution to R.P.F. (Rs. 3,000—2,400) by employer	600

Perquisite in the form of furnished house :

First 12½% of Salary (Salary for 10 months=30,000)=3,750

Next Excess of the F.R.V. over $37\frac{1}{2}\%$ of the salary F.R.V. of of house for 10 months	15,000		
Next $37\frac{1}{2}\%$ of salary	11,250	3,750	
		7,500	
Less : Rent recovered from Mr. B for 10 months		5,000	2,500
Passage Money Rs. 8,000 (Not taxable —exempt u/s 10)			
Perquisite in the form of Motor Car for personal use @ Rs. 150 p.m. As per Rule 3 for 10 months			1,500
Income-from other sources :			
Dividend from U.K. (Received in the U.K. not taxable as he was Resident but not ordinary resident in India.)			40,600
Less : Deductions u/s 80C :			
Contribution to R.P.F.	Rs. 3,000		
L.I.P.	Rs. 6,000		
	Rs. 9,000		
Deduction @ 60% on the first	Rs. 5,000=Rs. 3,000		
„ @50% on the balance	Rs. 4,000=Rs. 2,000		5,000
	Total Income		35,600

3. R, the owner of a three storied house in Calcutta, two of the stories having been constructed in 1960, gets rent of Rs. 500 per month from his tenant in the first floor. The ground floor, identical in all respects with the first floor, used to be occupied by a friend of R from whom R charged rent of Rs. 200 only per month. During the year ended 31st March, 1968, the friend stayed in R's house only upto 30th June, 1967, and since then the ground floor remained vacant upto 31st December, 1967. On 1st January, 1968 it was let out to a tenant at a rent of Rs. 500 per month.

In April, 1966 R started construction of the 3rd story, also identical in all respects with the ground floor and the first floor and completed such construction on 30th September, 1967. This story was let out on 1st October, 1967 also at a monthly rent of Rs. 500.

The expenses incurred by R during the year to 31st March, 1968 in respect of the house were as under :—

(i)	Cost of repairing ground floor	Rs. 750
(ii)	Cost of repairing first floor	Rs. 800
(iii)	Cost of constructing second floor	Rs. 25,000
(iv)	Interest on loan taken for construction of the second floor	Rs. 2,000
(v)	Municipal tax (both owner's and occupier's portions) for the ground floor	Rs. 300
	first floor	Rs. 300
	second floor	Rs. 150

(vi) Salary of an employee collecting the rents Rs. 100 per month. Compute R's income from the house for the A.Y. 1968-69 on the basis of the above noted data.

Ans. Computation of R's income from house property for the A.Y. 1968-69.

Rental Value :

@ Rs. 500 p.m. for 1st floor flat	= Rs. 6,000 per year	
@ Rs. 500 p.m. for ground floor flat	=Rs. 6,000 per year	
@ Rs. 500 p.m. for 2nd floor flat for 6 months	3,000	15,000
Less : Municipal Taxes		675
		14,325

(Full for two floors constructed prior to 1.4.60 & half for the 2nd floor)

Less : Statutory Deduction u/s 23 (1) for newly constructed residental unit (only for 2nd floor flat)	600
Annual Value	13,725

Less : 1) 1/6 for repairs		2,834	
2) Int. on Loan for construction of 2nd floor		2,000	
3 Collection charges (upto 6%)		824	
4) Vacancy allowance for 6 months for Ground floor flat = $\frac{1}{3}$ of A. Value (Rs. 6000—300)	5,700	2,850	8,508
Income from house property			5,217

4. (a) State the conditions for allowance of development rebate on new plant and machinery acquired for a business.

(b) An Indian tea company incurs expenses in 1966 for planting tea bushes partly on virgin soil and partly in replacement of old tea bushes. Is there any special allowance provided under the Income-tax Act, in respect of the cost of such planting, and if so, what is the measure thereof ? If the planting is completed in 1969, when will the special allowance be available, assuming that the company maintains calendar years as its accounting years ?

Ans. See Chapter VIII, Para 7 (5) & (6).

5. Discuss the chargeability or otherwise to income-tax of the following items :

(i) Gratuity of Rs. 20,000 received by P, on retirement on 31st December, 1967 after 35 years of service, his salary since 1st January, 1961 being Rs. 1,500 per month.

(ii) A cash prize of Rs. 50,000 received by a firm of architects at a competition for the best design of a proposed multistoried building. The firm claims exemption contending that the receipt was a casual and non-recurring nature.

(iii) Sale proceeds of land used for agricultural purposes.

(iv) Compensation received for premature termination of service.

Ans. (i) Maximum amount of Gratuity exempt from tax is 1/2 month's salary for each year of completed service or 15

months' salary or Rs. 24,000. Hence in this case the maximum amount exempted is the lowest of the following :—

(1) 15 months' salary = 15 × 1,500 Rs. 22,500
(Service is 35 years)

(2) Actual amount Recd. Rs. 20,000

Hence Rs. 20,000 is fully exempt from tax.

(ii) Cash prize received by a firm of architects at a competition for best design of a proposed multistoried building is not exempt from tax as casual income as it is arising out of the exercise of profession.

(iii) Sale proceeds of land used for agricultural purpose will not be taxable as "Capital gains" as it is not a "Capital asset".

(iv) It will be taxable under the head "Salaries".

6. Compute C's income under the head Profits and gains of business or profession" on the basis of the following particulars of his business of a textile mill for the year ended 31st March, 1968.

(i) the profit and loss account discloses a net profit of Rs. 2,00,000 ;

(ii) Rs. 15,000 incurred on making a secondhand boiler serviceable before use was debited to the profit and loss account ;

(iii) Rs. 1,80,000 was charged as depreciation on fixed assets the written down values of the assets and the respective rates of depreciation were as follows :

Assets	Written down value on 1.4.67	Rate of Depreciation
Plant and Machinery	15,00,000	10%
Factory Buildings	2,00,000	10%
Office Buildings	1,00,000	5%
Furniture	80,000	10%

During the year new plant and machinery costing Rs. 3,00,000 were installed at a further cost of Rs. 20,000 and brought into use from 1st November, 1967. The secondhand

boiler referred to in item number (ii) above cost Rs. 75,000 on 1st December, 1967 and was brought into use on 1st January, 1968. The rate of depreciation for the new machinery as well as the boiler is 10%.

(iv) Development rebate reserve of Rs. 25,000 was debited to the profit and loss account. Development rebate is admissible on new plant and machinery @ 20%.

Ans. Computation of total income under the head "Profits and Gains of Business or Profession" for the A.Y. 68-69.

	Rs.	Rs.
Net Profit as per P&L a/c		2,00,000
Add : (1) Capital Exp. being treated as revenue Exp. (Exp. on making a second hand boiler is a Capital expenditure)		15,000
(2) Depreciation : (To be considered separately)		1,80,000
(3) Development Rebate Reserve		25,000
		4,20,000
Less : Depreciation (As per rates) :		
(a) Plant & Machinery @ 10%	1,50,000	
Addition during the year Rs. 3,20,000 (@ ½ rate being in use for less than 180 days)	16,000	
(b) Factory Buildings @ 10% W.D.V. Rs. 2,00,000	20,000	
(c) Office Building @ 5% W.D.V. Rs. 1,00,000	5,000	
(d) Furniture @ 10% on W.D.V. Rs. 80,000	8,000	
(e) Boiler :		
Cost on 1.12.67 Rs. 75,000		
Exp. on making it serviceable Rs. 15,000		
	90,000	
Dep. Rate 10% at ½ the rate	4,500	
Total Depreciation		2,03,500

Development rebate :—
New Plant & Machinery 3,20,000
Dev. Rebate @ 20%=Rs. 64,000
(But development Rebate Reserve a/c is not=75% of the Development Rebate due hence development Rebate cannot be granted)

Total Income 2,16,500

CALCUTTA UNIVERSITY

B. Com. (Pass Course) 1968

Advanced Accountancy.

6. Discuss with reference to Income-tax Act :

(a) Company ; (b) Person ; (c) Method of Accounting ; (d) Resident.

Ans. (a) Chapter XVI, Para 2
(b) Chapter XV, Para 7.
(c) Chaptcr XIX, Para 7.
(d) See Chapter III, Para 2.

7. (a) What is meant by agricultural income ?

(b) Are the following incomes agricultural incomes ? Give reasons for your answer :

(i) A person is employed for managing an agricultural farm whose income is wholly exempt. He is paid at the rate of 10 per cent. of the income of the farm as his remuneration.

(ii) A company enjoys income only from agriculture. A share-holder receives a dividend from the company out of its income.

Ans. (a) See Chapter I, Para 11.

(b) (i) It is not agricultural income. The income in the hands of the farm owner is exempt but commission for managing the farm is not an agricultural income as it does not fulfil any of the conditions essential for agricultural income.

(ii) As per the decision of Supreme Court in *Mrs. Bacha F. Guzdar* v. *C.I.T.* this is not an agricultural income.

8. The following are the particulars of income of A, who is married but has no dependent child for the accounting year ended 31st March, 1968. Work out the amount of house rent exempt and total income from salary, and also the amount by which his income-tax will be reduced on account of personal allowance.

Salary Rs. 1,000 per month.

House Rent Received from employers—Rs 250 per month.

House rent paid by A for his accommodation in Calcutta—Rs. 400 per month.

Ans. The maximum amount exempted in respect of House Rent Allowance as per s. 10(13A) is :—

		Rs.
(a)	Actual amount of house rent allowance	3,000
(b)	20% of Salary	2,400
(c)	Excess of house rent over 10% of Salary	
	=House Rent Rs. 4,800	
	10% of salary Rs. 1,200	3,600
(d)	Maximum Amount exempted @ Rs. 300 p.m.	3,600

The maximum amount therefore exempted is Rs. 2,400 which is the minimum of the above four sums ; balance Rs. 2,400 will be taxable.

Computation of Total Income under the head "Salaries' :

Basic Salary @ Rs. 1,000 p.m.		12,000
House Rent allowance		
Total Received	Rs. 4,800	
Less : Maximum exempted as per s. 10(13A)	Rs. 2,400	
Balance taxable		2,400
Total Income		14,400

Total tax payable by Mr. A on account of personal allowance will be reduced by Rs. 200.

CALCUTTA UNIVERSITY 1967 (B)

B. Com. (Part II) Pass

6. A's total salary for the year ended 31st March, 1968, is Rs. 10,000. He is also entitled to a dearness allowance of Rs. 2,004 for the same year.

His contributions to a Recognised Provident Fund is Rs. 800.

He pays life insurance premia of Rs. 1,200.

A is a married man with three dependent children.

Work out the amount on which A will be required to pay income-tax, and the amount by which the income-tax will be reduced on account of personal allowance.

Ans. Mr. A's Assessment for the A.Y. 1968-69.

Salary		10,000
Dearness allowance		2,004
	Gross Salary	12,004
Deduction u/s 80 C :		
(1) P. F. Contribution	800	
(2) L. I. P.	1,200	
@ 60% of	2,000	1,200
	(Taxable) Total Income	10,804

Reduction in I. T. on account of personal allowance (married with more than 1 child will be Rs. 240)

7. (a) In what cases are receipts of casual and non-recurring nature liable to tax ?

(b) Are the following receipts exempt as receipts of casual and non-recurring nature ? Give reasons for your answer :

(i) A company secretary who is not associated with any college, sets a question paper on Secretarial Practice for the B. Com. Examination of a university and examines 96 answer-papers, for which he receives a total remuneration of Rs. 192.

(ii) Managing agents of a company bought plots of lands adjoining the company's mill by four sale deeds and sold them to the company five years later.

Ans. (a) See Chapter I, para 12.

(b) (i) The examinership remuneration of Rs. 192 is not a casual income as it arises due to his occupation.

(ii) It is not a casual income but is either (a) business income, if it is proved that the transaction constituted an adventure in the nature of trade, or (b) Capital gain.

8. Discuss with reference to Income-tax Act :

(a) Previous year,
(b) Not Ordinarily Resident,
(c) Total income of a person who is ordinary resident in India,
(d) Assessee.

Ans. (a) See Ch. I, para 8
(b) See Ch. III, para 2
(c) See Ch. III, para 4
(d) See Ch. I, para 9

CALCUTTA UNIVERSITY

Intermediate Law—(L.L.B.)—Jan. 1966

I. T. PAPER

1. "Income-tax is one tax, not a collection of taxes, essentially different". Discuss how far this dictum is applicable to the Indian Income-tax Act.

Ans. The Income-tax under the Income-tax Act, 1961, levied on the sum total of the income, classified and made chargeable under the various heads, is only one tax. It is not a collection of distinct taxes levied separately on each head of income. In other words, assessment to income-tax is one whole and not a group of assessments of different heads or items of income—*United Commercial Bank Ltd. v. C.I.T.* (1957) 32 I. T. R. 688 (S.C.). This principle was definitely established in England by the House of Lords in *London County Council* v. *Att. Gen.* 4 T. C. 265, 294 and

Salisbury House Estate Ltd. v. *Fry* 15 T.C. 266, 327 (H.L.). In the latter case Lord Dunedin observed as under :—

...the income-tax is only one tax, a tax on the income of the person whom it is sought to assess, and that the different Schedules are modes in which the Statute directs this to be levied."

Shah J. of the Supreme Court in the case of *East India Housing and Land Development Trust Ltd.* v. *C.I.T.* (1966) 42 I.T.R. 49, 51 observed as under :—

"Income-tax is undoubtedly levied on the total taxable income of the tax payer and the tax levied is a single tax on the aggregate taxable receipts from all the sources ; it is not a collection of taxes separately levied on distinct heads of income."

The following consequences ensue from the above principle :—

(a) *Total Income* :—An assessee may be chargeable on his total income comprised of income from different source computed under different heads even though the income under each head may be below the taxable limit.

(b) *Set off of loss* :—Under sec. 71 (See. Ch. XI, Section—C, para 9) a loss sustained by an assessee in any year under any of the heads may ordinarily be set off against income under any other head in that year.

(c) *The obligatary and exhaustive nature of the charge under a specific head* :—Income which is specifically made chargeable under a distinct head cannot be brought to charge under a different head in addition to, or in lieu of being charged under its specific head—*United Commercial Bank Ltd.* v. *C.I.T.* (1957) 32 I.T.R. 689 (S.C.). For example, the income from rents received from a house is under a specific head "Income from property" u/s 22 (on the notional annual income less certain deductions). If the actual rents received exceed the annual value, the ezcess cannot be taxed under any other head. There is no option in the matter of charging a particular income under a specific head.

All these factors establish that income-tax is only one single tax and not a collection of different taxes.

2. State in broad outlines the different kinds of income and profits which are included in the total income of a person under the Income-tax Act of India. Append short notes.

Ans. See Ch. IV to XI.

3. Discuss the distinction between capital expenditure & revenue expenditure. Give illustrations.

Ans. Capital Expenditure vs. Revenue Expenditure :

The term "capital expenditure" has not been defined in the Act. It has to be understood in a business sense. Reliance has to be placed on the decided cases in trying to classify an expenditure into capital or revenue. The following tests are generally to be applied in determining where a particular item of expenditure is capital expenditure or revenue expenditure :—

(1) Does the expenditure result into the acquisition of a capital asset ?

(2) Does the expenditure being into existence an advantage of enduring nature ?

(3) Is the expenditure referable to fixed capital as against circulating capital ?

(4) Has the expenditure been incurred in the initiation of a business ?

(5) Has the expenditure been incurred otherwise in the ordinary course of carrying on the business.

If the answer is 'Yes' the expenditure in most of the cases constitutes capital expenditure. If the answer is 'No' the expenditure would be revenue in nature.

In the leading case of *Atherton* v. *British Insulated & Helsby Cables Ltd.* (1926) 10 T.C. 155 (H.L.) Viscount Cave, L C. observed :

"When an expenditure is made not only once and for all, but with a view to bringing into existence an asset or an advantage for the during benefit of a trade... . there is very good reason (in the absence of special circumstance leading to an opposite conclusion) for treating such an expenditure as properly attributable not to revenue but to capital"

The principle was further elucidated in *Anglo-Persian Oil Co. Ltd.* v. *Dale* (1932) 16 T.C. 253 (C.A.). In *Assam Bengal Cement Co. Ltd.* v. *C.I.T.* (1955) 27 I.T.R. 34 the Supreme Court held "the expression 'once and for all' is used to denote an expenditure which is made once and for all for procuring an enduring benefit to the business as distinguished from a recurring exenditure in the nature of operational expenses." In *I R.* v. *Granite City Steamship Co. Ltd.* 13 T.C. I, Lord Sands observed :

"Broadly speaking, outlay is deemed to be capital when it is made for the initiation of a business, for extention of a business, or for a substantial replacement of equipment"

The expenditure incurred in the acquisition of a concern would be capital expenditure, the expenditure incurred in carrying on the concern would be revenue expenditure.—*The City of London Contract Corporation Ltd.* v. *Styles* 2 T.C. 239, 243 (C.A.).

Examples of Capital Expenditure :

(i) Cost of constructing a factory or fitting machinery-*Smith* v. *Westinghouse Brake Co.* 2 T.C. 357.

(ii) Cost of reconditioning a ship purchased in a dilapidated condition—*Law Shipping Co. Ltd.* v. *I.R.* 12 T.C. 621.

(iii) Price for the acquisition or purchase of the goodwill of a business—*Kuppuswami* v. *C.I.T.* (1954) 25 I.T.R. 349.

(v) Stamp duty and legal expenses incurred in connection with the issue of capital.

(v) Cost of reconstruction or refurnishing business premises—*Hyam* v. *I.R.* 14 T.C. 479.

(vi) A premium paid to the lessee for the grant or renewal of a lease—*Kamakshya Narain Singh* v. *C.I.T.* (1948) 16 I.T.R. 513 (P.C).

(vii) Payment for the purchase of mining rights—*Madhya Pradesh Industries Ltd.* v. *C.I.T.* (1959) 37 I.T.R. 342.

Examples of Revenue Expenditure :—

(i) There is no specific section governing the deduction of expenditure on maintaining an office establishment including the accounts department. Such an expenditure would be properly allowable under the residuary s. 37 (1) as being wholly and exclusively incurred for the purposes of the business—*Allen* v. *Farquharson Bros. & Co.* 17 T.C. 59.

(ii) Fees paid to income-tax advisers for services in connection with assessment proceedings—*Binodiram Balchand* v. *C.I.T.* (1963) 48 I.T.R. 548.

(iii) Legal costs incurred in the course of the normal carrying on of business—*Usher's Wiltshire Brewery Ltd.* v. *Bruce* 6 T.C. 399 (H.L.).

(iv) Fees payable in respect of initial registration and periodic renewal of trade marks which is valid for 7 years under the Trade Marks Act, 1940 is to be allowed as revenue expenditure as laid down by the Supreme Court in *C.I.T.* v. *Finlay Mills* (1951) 20 I.T.R. 475. The Board's circular dated 12.11.43 to the contrary is not applicable.

4. Discuss the conditions to be satisfied in order that a firm may claim registration under the Income-tax Act.

Ans. See Ch. XV, para 2.

5. Write short notes on any two of the following :—

(i) Previous year (ii) Deduction of tax at source (iii) Agricultural income.

Ans. (i) See. Ch. I, Para 8.
(ii) „ „ XXI „ 2 & 3.
(iii) „ „ I, „ II.

6. Name any three of the classes of income which are totally exempted from assessment under the Income-tax Act & write short notes on them.

Ans. See Ch. IV, Paras 3 & 4.

7. State the facts and discuss the principles laid down in :

Maharaj Kumar Gopal Saran Narain Singh Vs. Commissioner of income-tax (621. A, 207). Or

The Premier Construction Co. Ltd. Vs. Commissioner of income-tax, Bombay (75.I.A. 246)

Ans. See Appendix III.

CALCUTTA UNIVERSITY LL. B. (2nd Year)

Examination—January, 1965.

The Law relating to Income-tax etc. First half

1. Point out some of the Tests to distinguish between Capital and Income.

Ans. Distinction between Capital & Income :

The distinction between capital and income has been highlighted and applied from time to time in several Judicial decisions. However, in some cases where the term falls on the borderline, the task of ascribing it to capital or income becomes one of refinement. Though each case is to be decided upon its own peculiar facts and no infallible criteria can be laid down yet the judicial decisions as given below are useful as indicating the kind of considerations to be borne in mind in trying to evolve a solution to the problem. In support of this contention the following observations of Shaw J., of the Supreme Court in the case of *National Cement Mines Industries Ltd.* v. *C.I.T.* (1961) 42 I.T.R. 69, 77 (S.C.) may usefully be quoted :—

The decision of the question is, however, not left to the application of any arbitrary standards. There are certain

broad principles which guide the determination of the character of the receipt. The distinction between a capital receipt and revenue receipt though fine is real. The dividing line may be thin and often at first sight imperceptible."

The following tests are usually applied in distinguishing between capital receipts and income receipts :

(i) **Receipts in the usual course of business and other receipts** :—It is an accepted rule that if the receipt is as a result of some transaction in the assessee's ordinary line of business, it is to be regarded as revenue receipt or income. For example, receipts arising to an assessee carrying on business as shipbuilder and repairers from operating a passenger boat service are income. In *T. Beynon & Co.*, v. *Ogg*, 7 T.C. 125, a company carried on business, *inter alia*, as selling agent for various colliery companies. In the course of its business it had to purchase wagons on behalf of its clients. Anticipating a steep rise in prices due to war, it bought a large number of wagons on its own behalf. They were not intended for its own use but, were sold later at a profit. The profit on resale was held as taxable as being made in the course of the company's business. A transaction of purchase and sale of a capital asset may be on capital account.

Receipt as a result of transactions outside the assessee's ordinary line of business are of capital nature unless the transaction can be characterised as an adventure in the nature of trade. Lord Justice Clerk in *California Copper Syndicate* v. *Harris* 5 T.C. 159, 165 has stated ;

"What is the line which separates the two classes of cases may be difficult to define, and each case must be considered according to its facts, the question to be determined being—is the sum of gain that has been made a mere enhancement of value by realising a security or is it a gain made in an operation of business in carrying out a scheme for profit making."

(ii) **Fixed Capital and Circulating capital**—Ordinarily a receipt is regarded as a capital receipt when it is referable to

fixed capital and a revenue or income receipt when it is referable to circulating capital or stock-in-trade of the business. Fixed capital of an assessee is what he turns to profit by keeping it in his own possession. Fixed capital is not involved directly in the processes of being turned over. Circulating capital is capital which is turned over, and in the process yields profit or loss. The assessee makes profit by parting with it and letting it change masters. The same asset may be a fixed asset in the hands of one and a circulating capital in the hands of another. The nature of receipt depends upon the nature of the trade in connection with which it arises. Romer, L. J., said in *Golden Horseshoe (New) Ltd.* v. *Thurgood* 18 T.C. 280, 300 :

"The determining factor must be the nature of the trade in which the asset is employed. The land upon which a manufacturer carries on his business is part of his fixed capital. The land with which a dealer in real estate carries on his business is part of his circulating capital."

If the receipt is from a fixed capital asset or from an injury to the capital asset or if it destroys or materially destroys or cripples the structure of the profit-making apparatus or if it fills a hole in the capital of the assessee, it is to be regarded as a capital receipt. Where, on the other hand, the receipt is from stock-in-trade or from an injury to profits or where it fills a hole in the profits of a going business or where it results from the use of the asset as a means of obtaining an income, it is to be regarded as a revenue or income receipt.

In *Chunduri Venkata Reddi* v. *C.I.T.* (1959) 35 I.T.R. 87 the assessee was appointed by an agreement the sole distributor for the oil expellers manufactured by C & Co. of Lahore for a period of six years. The principals failed to supply the expellers as specified in the agreement. Suits were filed by both against each other. Later the suits were compromised and the principals *inter alia* supplied four oil expellers valued at Rs. 40,000 free of cost. It was held that the amount was a capital receipt as it was paid for parting with something which

can be described as an enduring asset of the business. In this case the cancellation of the agreement materially destroyed or crippled the structure of the profit-making apparatus. The sum was received for sterilising, as it were, a capital asset and hence it was properly regarded as capital receipt.

(iii) Multiplicity of transactions.—A receipt which is not in the usual course of business and which is not from circulating capital and which normally amounting to capital or accretion to capital may, by being repeated, lose its capital nature, and the repeated transactions may jointly constitute a trade or may constitute a series of adventures in the nature of trade. In *Raja Bahadur Visheshwara Singh* (*Deceased*) *& others* v. *C. I. T.* (1961) 41 I. T. R. 685 the Supreme Court affirmed the findings of the Appellate Tribunal that the assessee who was a big Zamindar and investor in shares in earlier years became a dealer in shares as a result of the substantial nature of the transactions in shares, the magnitude of the shares bought and sold and the ratio between the purchase and sales and the holdings.

Though the above rule would operate in most cases yet it cannot be laid down as an infallible criterion in deciding whether a particular receipt as a result of multiplicity of transactions is capital or income—*Lalit Ram Mangilal* v. *C. I. T.* (1950) 18 I. T. R. 286.

2. Describe the remedies afforded by the Indian Income-tax Act to an assessee aggrieved by an assessment order.

Ans. The various remedies afforded by the Income-tax Act to an assessee aggrieved by an assessment order by way of appeal, revision or reference have been described in detail in Ch. XXIV. Please refer to that chapter.

3. Discuss the conditions to be satisfied in order that a firm may claim registration under the Income-tax Act.

Ans. Please refer to Ch. XV, para 2 (i) wherein the conditions to be satisfied in order that a firm may claim registration under the I. T. Act have been given in detail.

4. Name any three of the classes of income which are totally exempted from assessment under the Income-tax Act and write short notes on them.

Ans. The three classes of Income which are totally exempted from assessment under the I. T. Act are :—

(1) Income of Religious and Charitable Trusts and Institutions (See Ch. IV, para 3).
(2) Agricultural income (See Ch. I, para 11).
(3) Casual income (See Ch. I, para 12).

5. Test with reason whether the following receipts are income :—

(A) Gains made in a lottery ;
(B) Instalments of purchase-money received by a person for sale of his property.

Ans. (A) **Gains made in a lottery** :—Such receipts come under the category of casual income (See Ch. I, para 12) and hence are fully exempt from tax u/s 10.

(B) **Instalments of purchase money received by a person for sale of his property** :—Such receipts are not income as they relate to fixed capital (See answer to Q. 1 above). Shaw J. of the Supreme Court in *National Cement Mines Industries Ltd.* v. C. *I. T.* (1961) 42 I.T.R. 69, 77 (S. C.) has observed as under :—"where capital is repaid in instalment, it is not liable to income-tax : for instance where a person sells his property and agrees to receive the price stipulated in instalments, by whatever name such instalments are called, they are not liable to Income-tax."

6. Write short notes on any two of the following :—
(A) Previous year ;
(B) Deduction of tax at source ;
(C) Agricultural income.

Ans. (A) See Ch. I, para 8.
(B) „ Ch. XXI, para 2 & 3.
(C) „ Ch. I, para 11.

7. State the facts of and discuss the principles laid down in :

(A) Maharajkumar Gopal Saran Narin Singh Vs. Commissioner of Income-tax 62, 1.A. 2071

OR

(B) Premier Construction Company Ltd. Vs. Commissioner of Income-tax, Bombay 75 I.A. 246.

Ans. Please see Appendix III.

APPENDIX V

OTHER LEADING TAX CASES

(Chapter-Wise)

Chapter I. Introduction & Definitions :

1. Mrs. Bacha F. Guzdar v. *C.I.T.* [*1955*] *27 I.T.R. 1 (S.C.).*

Dividend distributed in respect of the agricultural income of a company is not "agricultural income" in the hands of a shareholder.

2. C.I.T. v. *Raja Benoy Kumar Sahas Roy [1957] 32 I.T.R. 466 (S.C.).*

Agriculture in its primary sense denotes the cultivation of the field and is restricted to cultivation of the land in the strict sense of the term, meaning thereby tilling of the land, sowing of the seeds, planting and similar operations on the land. These are basic operations and require the expenditure of human skill and labour upon the land itself.

3. C. Ag. I.T. v. *New Ambadi Estates Ltd.* [*1967*] *63 I.T.R. 325 (S.C.).*

The proceeds of sale of the crops which had been harvested prior to the date of purchase were not agricultural income in the hands of the assessee.

CASUAL INCOME :

4. *Janab A. Syed Jalal Sahib* v. *C.I.T.* [*1960*] *39 I.T.R. 660.*

It is virtually impossible to look upon gambling by betting or racing as constituting a professional or vocation. Receipts even from habitual betting are non-recurring receipts.

5. *Ramanathan Chettiar* v. *C.I.T.* [*1967*] *63 I.T.R. 458* (*S.C.*).

A receipt of interest which is foreseen and anticipated cannot be regarded as casual even if it is not likely to recur again, e.g., interest paid by Estate Duty Authorities on excess estate duty collected.

CAPITAL & REVENUE (OR INCOME) :

6. *I.R.* v. *Wesleyan & General Assurance Society* [*1948*] *16 I.T.R. Suppl. 101* (*H.L.*).

The name given to a transaction by the parties concerned does not necessarily decide the nature of the transaction. The question always is what is the real character of the payment, not what the parties call it.

7. *C.I.T.* v. *Vazir Sultan & Sons* [*1959*] *36 I.T.R. 175* (*S.C.*) *quoting with Approval John Smith & Sen* v. *Moore 12 T.C. 276* (*H.L.*).

Fixed capital is what the owner turns to profit by keeping it in his own possession ; circulating capital is what he makes profit of by parting with it and letting it change masters.

8. *Venkataswami* (*G*) *Naidu & Co.* v. *C.I.T.* [*1959*] *35 I.T.R. 594* (*S.C.*).

The principles underlying the distinction between a capital sale and an adventure in the nature of trade were examined and laid down.

Chapter IV. Exemptions & Reliefs.

RELIGIOUS & CHARITABLE TRUSTS :

9. *In re : Trustees of the Tribune* [*1939*] *7 I.T.R. 415* (*P.C.*).

The English decisions have no binding authority on the construction of the definition of "charitable purposes". In

order to constitute a valid charity it is sufficient if the intention is to benefit a sufficiently large section of the public, as distinguished from specified individuals.

10. *J.K. Trust* v. *C.I.T.* [*1957*] *32 I.T.R. 535 (S.C.).*

The word "property" in sec. 11 is a word of very wide import in the context. It was held to include the business of managing agency within its scope.

11. *C.I.T.* v. *Andhra Chamber of Commerce* [*1965*] *55. I.T.R. 722 (S.C.).*

Advancement or promotion of trade, commerce and industry leading to economic prosperity ensured for the benefit of the entire community would be object of general public utility.

12. *East India Industries (Madras) P. Ltd.* v. *C.I.T.* [*1967*] *65 I.T.R. 611 (S.C.).*

The carrying on of a business of manufacture, sale and distribution of pharmaceutical, medicinal and other preparations was neither charitable nor religious in character.

Chapter V.

SALARIES :

13. *Mahesh Anantrai Pattani & Another* v. *C.I.T.* [*1961*] *41 I.T R. 481 (S.C.).*

Gift by former employer in consideration of loyal and meritorious services held to be not taxable.

Chapter VIII. Profits & Gains of Business or Profession.

14. *Janki Ram Bahadur Ram* v. *C.I.T.* [*1965*] *57 I.T.R. 21 (S.C.).*

The nature of transaction must be determined on a consideration of all the facts and circumstances which are brought on the record of the I.T. authorities.

15. *C.I.T.* v. *Lahore Electric Supply Co. Ltd.* [*1966*] *60 I.T.R. 1 (S C.).*

Business is an activity capable of producing a profit which can be taxed. Payment of outstanding liabilities is not an activity which can ever produce such a result.

BUSINESS EXPENDITURE :

16. *Indian Molasses Co. Pvt. Ltd.* v. *C.I.T.* [*1959*] *37 I.T.R. 66* (*S.C.*).

"Spending" in the sense of "paying out or away" of money is the primary meaning of "expenditure". Expenditure is what is paid out or away and something which is gone irretrievably.

17. *C.I.T.* v. *Chandulal Keshavlal & Co.* [*1960*] *38 I.T.R. 601* (*S.C.*).

In deciding whether a payment of money is a deductible expenditure one has to take into consideration questions of commercial expediency and the principles of ordinary commercial trading.

18. *Sitalpu Sugar Works Ltd.* v. *C.I.T.* [*1963*] *49 I.T.R. 160* (*S.C.*).

Expenditure incurred in dismantling and refitting existing plant at a better site is capital expenditure.

19. *Haji Ajiz & Abdul Shakoor Bros* v. *C.I.T.* [*1961*] *41 I.T.R. 350* (*S.C.*).

Payment of penalty for getting the goods released from the Customs Authorities who had seized them for illegal acts by the assessee held to be not deductible as business expense *C.I.T.* v. *Hirjee* [1953] 23 I.T.R. 427 also explained.

20. *Newtone Studios Ltd.* v. *C.I.T.* [*1955*] *28 I.T.R. 378.*

The I.T. authorities have no power to consider the reasonableness or otherwise of remuneration to employees.

21. *C.I.T.* v. *Chari & Chari Ltd.* [*1965*] *57 I.T.R. 400*(*S.C.*).

The final conclusion on the admissibility of an allowance claimed is one of law.

22. *Bombay Steam Navigation Co.* [*1953*] (*P*) *Ltd.* v. *C.I.T.* [*1965*] *56 I.T.R. 52* (*S.C.*).

If the expenditure is so related to the carrying on or conduct of the business that it may be regarded as an integral part of

the profit earning process and not for acquisition of an asset or a right of permanent character, the possession of which is a condition to the carrying on of the business, the expenditure may be regarded as revenue expenditure.

23. *India Cements Ltd.* v. *C.I.T.* [*1966*] *60 I.T.R. 52* (*S.C.*).

Amount spent towards stamps, registration fees, lawyer's fees, etc. in connection with securing a loan on mortgage of assets is revenue expenditure.

24. *Travancore Titanium Products Ltd.* v. *C.I.T.* [*1966*] *60 I.T.R. 277* (*S.C.*).

Wealth-tax paid by an assessee is not an allowable deduction.

25. *Gotan Lime Syndicate* v. *C.I.T.* [*1966*] *59 I.T.R. 718* (*S.C.*).

Dead rent paid in connection with the mining lease of limestone quarries is a revenue expenditure like royalty.

26. *Sree Meenakshi Mills Ltd.* v. *C.I.T.* [*1967*] *63 I.T.R. 207* (*S.C.*).

The deductibility of expenditure incurred in prosecuting a civil proceeding depends on the nature and purpose of the legal proceeding in relation to the assessee's business and cannot be affected by the final outcome of that proceeding.

27. *Jugalkishore Baldeo Sahai* v. *C.I.T.* [*1967*] *63 I.T.R. 238* (*S.C.*).

If remuneration is paid to the Karta of an H.U.F. under a valid agreement which is bonafide and in the interests of, and expedient for, the business of the family and the payment is genuine and not excessive, such remuneration would be an allowable expenditure.

DEPRECIATION :

28. *C.I.T.* v. *Jaipuria China Clay Mines* (*P.*) *Ltd.* [*1966*] *59 I.T.R. 555* (*S.C.*).

The unabsorbed depreciation of past years has to be added

to the depreciation of the current year and the aggregate unabsorbed and current year's depreciation had to be deducted from the total income of the relevant previous year.

29. *C.I.T.* v. *Nandlal Bhandari Mills Ltd.* [*1966*] *60 I.T.R. 173* (*S.C.*).

The words "actually allowed" in relation to the depreciation on a capital asset means the actual depreciation deducted in arriving at the taxable income and not the gross depreciation.

30. *C.I.T.* v. *Alps Theatre* [*1967*] *65 I.T.R. 377* (*S C.*).

The word "building" means structures and does not include site. Therefore, depreciation is not allowable on the cost of the land on which a building is erected but only on the cost of the superstructure.

Chapter IX. CAPITAL GAINS :

31. *C.I.T.* v. *Bhurengiya Coal Co.* [*1958*]*34 I.T.R. 802*(*S.C.*).

The title to immovable properties covered by the sale of deed passed to the transferee on the date it was executed and the title to the movable properties passed to the company on the day they were handed over.

32. *Alapati Venkataramaiah* v. *C.I.T.* [*1965*] *57 I.T.R. 185* (*S C.*).

'Transfer' means effective conveyance of the capital asset to the transferee. Delivery of possession of immovable property could not itself be treated as equivalent to conveyance of the immovable property.

33. *Miss Dhun Dadabhoy Kapadia* v. *C.I.T.* [1967] *63 I.T.R. 651* (*S.C.*).

In working out capital gain or loss (in respect of sale proceeds of right shares in this case), the principles that have to be applied are those which are part of a commercial practice or which an ordinary man of business will resort to when making computation for his business purposes.

Chapter XI Transfers etc.

34. *Philip John Plasket Thomas* v. *C.I.T.* [*1963*] *49 I.T.R. 97* (*S.C.*).

In order to attract the provisions of sec. 64, the relationship of husband and wife must subsist not only at the time of the accrual of income from the assets transferred but also when the transfer of assets is made.

35. *C.I.T.* v. *Keshavlal Lallabhai* [*1964*] *55 I T.R. 637* (*S.C.*).

Where an individual voluntarily throws his self-acquired properties into the hotch-pot of an H.U.F., there is no transfer effected by him in favour of his wife or minor child u/s 64. When subsequent transfers of such properties take place among the members of the family as a result of partition by metes and bounds, that transaction cannot be regarded as a transfer by that individual to his wife or minor child.

Chapter XIV. Assessment of a Hindu Undivided Family.

36. *Gowli Buddanna* v. *C.I.T.* [*1966*] *60 I.T.R. 293* (*S.C.*).

There need not be more than one male member to form an H.U.F. as a taxable entity under the I.T. Act. The expression 'H.U.F.' in the I.T. Act is used in the sense in which an H.U.F. is understood under the personal law of the Hindus. The I.T. Act does not indicate that H.U.F. as an assessable entity must consist of at least two male members.

37. *Mathura Prasad* v. *C.I.T.* [*1966*] *60 I.T.R. 428* (*S.C.*).

The remuneration of the manager of a Hindu undivided family becoming partner in a firm with the aid of family funds is assessable as income of the H.U.F.

38. *Pratap Narain* v. *C.I.T.* [*1967*] *63 I.T.R. 505* (*All.*).

Property received by a member of a Hindu joint family, who has a wife but no male issue, on a partition of the joint family properties, and the income from such properties belong to the H.U.F. and not to the individual.

Chapter XV. Assessment of Firms.

39. *Umacharan Shaw & Bros.* v. *C.I.T.* [*1959*] *31 I.T.R. 271* (*S.C.*).

The firm was entitled to registration inspite of the fact that the bank accounts were maintained in the names of the holders of the excises licences and not in the name of the firm in accordance with P/Deed.

40. *R.C. Mitter & Sons* v. *C.I.T.* [*1959*] *36 I.T.R. 194* (*S.C.*).

The instrument of partnership should have been in existence in the accounting year in respect of which assessment is being made. Conditions for getting registration to a firm were laid down.

41. *C.I.T.* v. *Dwarkadas Khetan & Co.* [*1961*] *41 I.T.R. 528* (*S.C.*).

The partnership deed in which a minor was admitted as a full partner was not valid and could not be registered under the I.T. Act.

42. *C.I.T.* v. *Bagyalakshmi & Co.* [*1965*] *55 I.T.R 655* (*S.C.*).

A partner may be the karta of a joint Hindu family ; he may be a trustee ; he may enter into a sub-partnership with others ; he may, under an agreement express or implied be the representative of a group of persons he may be a benamidar for another. In all such cases he occupies a dual position. On the partnership, he functions in his personal capacity ; qua the third persons, in his representative capacity.

43. *C.I.T.* v. *Shah Mohandas Sadhuram* [*1965*] *57 I.T.R. 415* (*S.C.*).

A guardian can accept benefits of partnership on behalf of a minor. A guardian is entitled to agree to contribute capital

on behalf of the minor. He has the power to accept the conditions on which the benefits of partnership are being conferred.

44. *C.I.T.* v. *A. Abdul Rahim & Co.* [*1965*] *55 I.T.R. 651 (S.C.).*

A firm would be entitled to registration even if one of the partners was a benamidar of another person.

45. *Kylas Sarabhaiah* v. *C.I.T.* [*1965*] *56 I.T.R. 219 (S.C.).*

The deed of partnership should be reasonably construed. The substance of the agreement could not be permitted to be overshadowed merely by the use of the collective description of some of the person who had agreed to be partners. The word "specifying" meant "mentioning, describing or defining in detail" it does not mean expressly setting out in fractional or other shares.

46. *C.I.T.* v. *Chander Bhan Harbhajan Lal* [*1966*]

60 I.T.R. 188 (S.C.).

The mere existence of a sub-partnership with respect to the share of one partner in the main firm does not make the members of the sub-partnership partners in the main firm.

47. *Parekh Wadilal Jivanbhai* v. *C.I.T.* [*1967*]

63 I.T.R. 485 (S.C.).

A partnership firm was held entitled to registration where only share in capital were specified and the deed provided only that "Profits and loss shall be divided amongst partners".

48. *Jeewanram Gangaram* v. *C.I.T.* [*1967*] *64 I.T.R. 483.*

A firm is entitled to registration where a minor is specifically admitted to benefits of partnership but where the share of minor is made liable for losses and the minor sign the application for registration.

Chapter XVI. Assessment of Companies.

49. *C.I.T.* v. *Gangadhar Banerjee & Co.* [*1965*] *57 I.T.R. 176* (*S.C.*).

In the absence of material to show that the real commercial profits were artificially reduced in the balance-sheet or to indicate what part of the income represented commercial profits it had to be assumed that the net profits shown in the balance-sheet correctly represented the commercial profits.

50. *Gobald Motor Services* [P] *Ltd.* v. *C.I.T.* [*1966*] *60 I.T.R. 417* (*S.C.*).

If an item of receipt is deliberately omitted from the accounts it cannot be said that commercial principles prevent that amount being added to the profits in order to arrive at the real commercial profits.

Chapter XIX. Assessment Procedure.

51. *Addl. I.T.O.* v. *E. Alfred* [*1962*] *44 I.T.R. 442* (*S.C.*).

The word "assessment" bears different meanings, and in one sense it comprehends the entire process of computation and levy of tax.

52. *Jagannath Hanumanbux* v. *I.T.O.* [*1957*] *31 I.T.R. 603.*

The order of protective assessment was not illegal but the act of protective recovery was bad in law.

53. *Dhakeswari Cotton Mills Ltd.* v. *C.I.T.* [*1954*] *26 I.T.R. 775* (*S.C.*).

When making an estimate of income, the I.T.O. must disclose to the assessee the substance of data on which his estimate is based.

54. *S.N. Navasivayam Chettiar* v. *C.I.T.* [*1960*] *38 I.T.R. 579* (*S.C.*).

If after taking into account all the materials including the want of a stock register, it was found that from the method of

accounting the correct profits of the business were not deducible, he I.T.O. would be justified in applying the proviso to s. 145 and estimate the profits.

55. *Badridas Daga* v. *C.I.T.* [*1958*] *34 I.T.R. 10* (*S.C.*).

Once it was established that the agent was incharge of the business, that he had authority to operate on the bank a/c, and that he withdrew moneys in the purported exercise of that authority, his action was referable to his character as agent and any loss resulting from misapproporiation of funds by him was a loss incidental to the carrying on of the business.

APPENDIX VI

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